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THE CONDUCT OF

AND

PROCEDURE AT

PUBLIC AND COMPANY

MEETINGS

SIXTH EDITION

[REVISED AND ENLARGED]

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THE CONDUCT OF AND PROCEDURE AT

PUBLIC AND COMPANY

MEETINGS

BY

ALBERT CREW

Of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law;
Lee Prizeman of Gray's Inn
Examiner in Commercial Law and Company Law, Royal Society of Arts
Examiner in Commercial Law and International Law to
H.M. Civil Service Commission

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PREFACE TO THE SIXTH EDITION.

IN preparing this Sixth Edition, the Author has taken the opportunity of thoroughly revising the text, and has added many recent and other leading cases applicable to meetings, *inter alia,* Young *v.* Ladies Imperial Club (1920, 36 T. L. R. 392), which followed Smyth *v.* Darley (1849, 2 H. L. Cas., 789), and emphasised the principle that notices of meetings must be sent to all members within summonable distance. In *re* Express Engineering Co. (1920, 36 T. L. R. 275) decided that where articles prohibited directors from voting in respect of contracts in which they were personally interested, and where in fact all the members of the company are directors, that such directors at a board meeting could vote in regard to such contracts, as they might well have turned it into a general meeting and transacted the same business. This follows the principle that a company is bound in a matter *intra vires* by the unanimous agreement of its members.

Some consideration has been given in this Edition to the principles affecting the government and control of limited companies, more particularly as regards the Rule in Foss *v.* Harbottle, the powers of majorities and the rights of minorities, limits of alteration of articles, the powers of adjournment, and special resolutions and amendments thereof.

The Author regrets to record the death of a valued contributor to this book after a short but brilliant military career. Captain GEORGE GOODES, M.C., was gazetted Second Lieutenant 2/4th Batt. London Regiment in May, 1915. He won the M.C. for great personal bravery and devotion to duty while in command of a trench mortar battery near Souchez in June, 1916. Shortly afterwards he was promoted Captain and won a bar to the M.C. for conspicuous work at High Wood in September, 1916. About three weeks later he was killed by a shell.

Captain GOODES was a well-known professor of elocution at the Polytechnic, Regent Street, London, and his loss is greatly deplored by a very large circle of friends.

A. C.

1 ESSEX COURT,
TEMPLE, E.C. 4.

16th April, 1920.

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A. C. - - -	Appeal Court Reports (House of Lords).
App. Cas. - -	Appeal Cases (House of Lords).
A. & E. - - -	Adolphus & Ellis's Reports.
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No. of Cas. - -	Notes of Cases.
Q. B. - - -	Queen's Bench Reports.
Q. B. D. - -	Queen's Bench Division, Law Reports
Sc. L. R. - -	Scotch Law Reporter.
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INTRODUCTION.

THE Procedure at and Conduct of Meetings of Public Authorities are generally governed by Statutory Regulations or set Rules called "Standing Orders"; those of Limited Companies by their Articles of Association.

To avoid confusion in debate and to expedite business, it is always desirable to have clear and definite rules for regulating the proceedings of any body which meets at regular intervals. Public Meetings held occasionally for some religious, political, or social object should be subject to a prearranged order of conduct, so that neither the speakers nor the hearers may be unnecessarily irritated. A successful Meeting largely depends upon the sympathy which exists between the platform and the audience, and this sympathy will be endangered by a lack of method in its conduct and a want of knowledge of the rules and principles which govern the holding and proceedings of Meetings. A well-ordered Meeting is conducive to good feeling, and this result cannot be obtained without attention to the organisation of its proceedings and a defined method in the conduct of its debate.

In PART I. of the following pages some general principles and rules for the procedure at Public and other Meetings are discussed and laid down; PART II. deals with the Law and Regulations affecting Limited Companies governed by The Companies Acts, 1908 to 1917. When reference is made to Table A it should be always understood that the provisions contained therein only, as a rule, refer to Companies which have not elected to furnish themselves with special Articles of Association which have been duly registered. (See, however, Section 11 of the Act of 1908.)

PART III. includes a Chapter on "The Art of Public Speaking" by the late Captain GEORGE GOODES, M.C.

The Appendices comprise, *inter alia*, Notes, Definitions of Terms, Statutes relating to Meetings, the Sections of The Companies Clauses Act, 1845, which refer to Meetings, and also similar Clauses in Table A, Practice of the Police at Public Meetings, Free Speech and Blasphemy, Forms of Notices of Meetings, Agenda Papers, Minutes, and Test Questions.

PART I.

THE CONDUCT OF AND PROCEDURE AT PUBLIC MEETINGS, OTHER THAN COMPANY MEETINGS.

CHAPTER I.

PUBLIC AND OTHER MEETINGS, OTHER THAN COMPANY MEETINGS.

Advertisement and Notice Thereof.

IN the absence of statutory rules, standing orders, or other regulations, the promotion and convening of public and other meetings necessarily depend on the object of the proposed meeting.

It is evident that either some established body or some definite persons should be responsible for the organisation and consequent expenses which a properly conducted meeting entails. It is therefore incumbent on that body or those definite persons to meet beforehand and settle the preliminaries, such as the hire of hall, advertising, printing, and the like. A secretary and a treasurer are necessary officers, and the management should be entrusted to a small working committee, whose proceedings and orders should be duly minuted, and whose accounts should be carefully kept and audited. If the meeting is of a minor character and the expenses small the promotion and convening may be left to one person, but as a rule it is essential that there should be some definite organisation to promote and conduct meetings at which the attendance may be large and the expenses connected therewith not inconsiderable. If the proposed meeting is one at which the general attendance of the public is desired, due and adequate notice should be given. There are many methods of advertising a meeting, each having certain advantages with corresponding drawbacks. Among those commonly used are the following:—

1. *Distribution of handbills.*—This has the merit of cheapness. When handbills, however, are delivered from

door to door they are generally unwelcomed. A variety of footprints implanted on a newly cleaned doorstep, unfastened gates, and a letter-box stuffed with unwanted matter are not unusual results which follow from the distribution of handbills, and therefore they are unbeloved by the average householder. Further, a large proportion of such handbills is never read.

2. *Bill-posting.*—This is an admirable method, provided the stations on which they are displayed are in prominent and good positions. But often these stations surround plots ripe for building, and therefore somewhat out of the way, or the stations are contiguous to buildings in course of demolition or erection. In such cases the superstitious often take pains to avoid the ladders, and the cautious the chance of meeting a falling brick or other débris, and consequently fail to read the notices there displayed. "Fly-posting" is very effective, but an intolerable nuisance to those whose walls are adorned in this way. One of the best methods is to advertise on railway stations or the approaches thereto, the departure platforms on unpunctual railways being preferable.

3. *Newspaper advertisement.*—The most effective medium of advertising is undoubtedly the newspaper, provided sufficient space is taken in order to make a proper display. There is no doubt that when the results and effect of advertising in the newspaper are carefully considered it is by far the cheapest method.

The publicity which comes from advertising in a newspaper is unrivalled. The local paper is generally thoroughly read and its advertisements scanned—sometimes for interest, at others for profit, and not infrequently for amusement. Economy in space means an ineffective display; a useful advertisement should aim at drawing the attention of even the casual reader.

It is obvious that with the multiplicity of meetings the local newspaper cannot insert reports of all, but there is no doubt that some preference and prominence are rightly given to the meetings which have been advertised

in its columns. Further, a preliminary notice in its news columns or diary of forthcoming events is often accorded to such meetings, which is exceedingly useful in bringing them under the notice of those who have failed to read the advertisements. It is a mistake to confine advertisements of political meetings to the party organs, unless they are merely demonstrations of the faithful.

An advertisement in the opposition papers often ensures a report of the meeting, which reaches the eye of the unconverted person who never reads a paper or attends any meeting except those of his own political faith. Thus an opportunity is given to a large class of persons who confine themselves ordinarily to one aspect of the case to know both sides of the question.

Notices.

The meeting may concern only an elected or selected class of people, in which case due and *adequate notice* must be given to each member *entitled to be present* in strict accordance with the standing orders or rules of the body, organisation, or society affected, and such notice must be issued by the proper officer or person.

1. *Want of notice in such cases may affect the validity of a meeting.*—"I am of the same opinion [*i.e.* no justification of an assault had been made out on the ground that the meeting was not a select vestry duly assembled] . . . . The question is whether the allegation that the defendants were duly assembled as a select vestry has been made out. As they were assembled not on the general day of meeting, but on a particular day and for a special purpose, they should have proved the notice, without which they could not be assembled as a vestry. The sort of notice is not material; but some notice should have been shown, and it is admitted that one of them received none" (Bosanquet, J., in Dobson *v.* Fussy, 7 Bing., p. 311).

Where a certain act is to be done by a particular body all the members entitled to attend must be summoned if they are within a reasonable summoning distance, and the

omission to summon any one so entitled will invalidate the proceedings (Smyth *v.* Darley, 1849, 2 H. L. C. 789, *infra*, p. 8). Where a person is beyond reasonable summoning distance the empty form need not be gone through of sending notice to him, and in Young *v.* Ladies Imperial Club, 1920, 36 T. L. R. 392, the Master of the Rolls was inclined to the opinion that the same rule would apply in the case of a member who was so ill as to be unable on that ground to appear, but except in these cases there is an obligation to send a notice to each member of the committee, and failure to do so, renders invalid any resolutions passed by such a committee, so that a person who agrees to allow her name to appear on the list of members of a committee but had intimated that she would be unable to attend any of the meetings is a summonable person, and a notice must be sent to her, otherwise any resolutions of such a committee will be invalid. A member of a committee has certain duties to perform as well as privileges to enjoy, and it may well be that a person joining a club does so on the faith of the particular member of a committee discharging the duties attaching to the office.

2. *Want of notice or an improper notice may nullify the acts done at a meeting of this kind.*—"In my opinion what was done was wrong: first, because there was no proper notice given to a person who ought to have had notice . . . . and, secondly, because another gentleman was present who ought not to have been" (North, J., in Lane *v.* Norman, 66 L. T., p. 86). But see Longfield Parish Council *v.* Wright (*post*, p. 9).

3. *Insufficient notice may affect the validity of resolutions passed at a meeting.*—"Undoubtedly it was the intention of the Legislature in framing this Statute to provide that due information should be given to all the parishioners of the special purpose for which their attendance is required . . . . As to the second part of the resolution—the making a rate for the general expenses of the parish—we are all clearly of opinion that the notice was wholly

insufficient for that purpose [*i.e.* because the notice did not clearly apprise the parishioners of the special purposes for which the meeting was called] and that the provisions of the Statute have not been complied with" (per Dr. Lushington, in Smith *v.* Deighton and Billington, 8 Moore C. P. 187).

"If the circular convening that meeting had stated the specific object for which it was to be held, I do not deny that the resolution may have been within the scope of its authority" (St. Leonards, L. C., in Lawes's Case, 1 De G. M. & G., p. 421).

In Young *v.* Ladies Imperial Club (*supra*) it was held that as the notice of a meeting did not state the object of the meeting with sufficient particularity it was invalid, and consequently the proceedings of that meeting were likewise invalidated.

4. *Notices must be fairly explicit and clear to ordinary minds.* They must be frank, open, clear, satisfactory, and free from "trickiness" (Kaye *v.* Croydon Tramways, p. 80).—"The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly. I think the question may be put in this form: What is the meaning which this notice would fairly carry to ordinary minds? That, I think, is a reasonable test" (Chitty, J., in Henderson *v.* Bank of Australasia, 1890, 45 Ch. D., p. 337).

5. *Notice of special business should be very explicit, and give the fullest information relating to the matters for consideration or decision.*—When a meeting is summoned for special business, no other business should be transacted except that of which due and adequate notice has been given, although, in general, what is known as ordinary business (if included in the agenda paper of which due notice has been given) may be transacted at any meeting of a recognised corporate body. There are generally some regulations as to the calling of special meetings, or the transaction of special business, which invariably provide that a certain

time must elapse before such meeting or business can be held or transacted. In some cases special business can only be transacted at specified meetings.

6. *In giving notice of a meeting it is necessary to give in detail the following particulars:* place, date, day, and time of meeting. If one meeting is to be held immediately after another it is desirable to fix the time of the second meeting when it is thought the first meeting will end, adding the alternative " or at the rising of the (previous) meeting."

7. *A public body entrusted with the performance of a public duty* cannot hold an extraordinary meeting unless all the members be summoned who can be summoned, or the unsummoned members are actually present at such meeting. The proceedings at a meeting at which any individual is not present who might have been summoned and was not summoned, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned (Rex *v.* Langhorne, 1836, 6 N. & M. 203).

8. *Absence, beyond summoning distance (or possibly serious illness), of a person entitled to attend a meeting is a good reason for not summoning a member.*—" The election being by a definite body on a day on which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any one of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance (as, for instance, abroad), there could not be a good electoral assembly, and even a unanimous election by those who did attend would be void " (Campbell, C. J., in Smyth *v.* Darley, 1849, 2 H. L. C. 789, at p. 803).

In *re* Portuguese Copper Mines (1889, 42 Ch. D. 160), a director of a company, on being told a meeting would be held next week said, "I cannot be there." It was held that this could not be relied on as a waiver of his right to notice, and as no notice was sent to him the meeting was declared invalid. " Perhaps if a member were at such a distance that it would be absolutely

impossible for him to attend, then the secretary might be excused from sending a notice to him and the meeting would be properly convened. Possibly the same exception might hold good when a member was so dangerously ill that he could not be moved" (Sterndale, M. R., in Young *v.* Ladies Imperial Club, *supra*).

9. *Ineffective notice and subsequent meeting.*—A resolution by a parish council to dismiss its clerk was passed at a meeting, the notice convening which did not specify that such resolution would be considered at the meeting. It was held that such notice was not effective. At a subsequent meeting, of which due notice specifying the business to be transacted had been given, a resolution was passed appointing a temporary clerk. It was held that the resolution must be treated either as a confirmation of the resolution passed at the previous meeting, or as a separate and distinct resolution to dismiss the clerk (Longfield Parish Council *v.* Wright, 1919, 88 L. J., Ch. 119).

10. *Notice sent but not received through neglect of member.*—In James *v.* Chartered Accountants (Institute), 1907, 98 L. T., 225, it was held that a notice posted to the registered address of a member proposed to be expelled was sufficient, though, having changed his address, he never actually received it and it had been returned through the Dead Letter Office, the member having neglected to notify his change of address.

11. *Clear days' notice.*—Where the rules specified a fortnight's notice, a notice sent on the 1st of November for a meeting to be held on the 14th November was declared invalid in Labouchere *v.* Wharncliffe, *post*. In the absence of special provision the number of days must be "clear," *i.e.* exclusive of the day of service and the day on which the meeting is held.

CHAPTER II.

THE CHAIRMAN.

"It's the chair as is speaking," said Mr. Gape, who had a true Englishman's notion that the chair itself could not be called to order.—"Orley Farm," by ANTHONY TROLLOPE.

TO constitute a meeting there must be a quorum of members present (generally within a specified time). After it is ascertained that a quorum is present, the first business of a meeting is the taking of the chair by the duly appointed person.

QUALIFICATIONS OF A CHAIRMAN.

The ideal chairman should be a man of infinite tact and patience, possess a judicial mind, be able to command the respect of the meeting, be absolutely impartial in his rulings—never allowing the latter to be questioned—and always ready and resourceful when difficulties arise. He should be firm, yet courteous, able to govern men, not allow himself to be carried away by party or other feelings, able to endure bores cheerfully and circumvent mere obstructionists skilfully.

A chairman should possess a calm, placid temperament, have a proper sense of the dignity of his position, not be garrulous, and be accustomed to rule without fussiness, hauteur, or bullying.

A good chairman should be able to govern a meeting with genial domination and be a benevolent autocrat—not overbearing or brusque in manner, but determined in a quiet way to have the business of the meeting transacted in an orderly and expeditious manner. He should have a wide knowledge of men, and some acquaintance with the subject under discussion. He should remember that men at meetings are often but children of a larger (sometimes not much larger) growth, and should combat their petulance, unreasonableness, and pettiness by common sense, sweet reasonableness, and quiet determination. He must believe

in himself, but not allow his masterfulness to obtrude too much. A chairman should have some strength of character; hearing and seeing all things, but conveniently and quietly ignoring at times those matters which might better have been left unsaid or not done. Occasionally he may be subjected to rude or personal remarks; if these are unjust, it is generally well to leave them unnoticed. On the other hand, should there be some cause for such ill-natured criticism, he might change his manner or tactics. Nothing impresses a meeting so much as strict impartiality - especially the minority, the strength of whose opposition is often in inverse ratio to their numbers. Above all, he should not lean over-much to the popular side; a little judicious praise or approbation of the other side will tend to disarm and counteract the suspicious and quell the incipient disorder of the opposition. At all events he should never allow the unpopular side to feel that "minorities must suffer." In fine, he must get his own way in the conduct of the meeting, and get it—if he can—peacefully and without friction, making it appear that his will and that of the meeting are one and the same.

It is a good discipline for a cantankerous and voluble person to be in the chair for a period, but it may result in proving a greater burden than his long-suffering fellow members ever dreamt of.

Appointment.

The chairman in many instances is elected for a period —*e.g.* the mayor of a corporation, the chairman of a county council, urban district council, rural district council, parish council, the president of a society, and the chairman of a joint stock company (see R. *v.* Jackson, *post*, p. 16, as to eligibility of person appointed as chairman). Often there is a deputy-chairman—designated vice-chairman, or vice-president—who takes the chair in the absence of the regular chairman at the appointed time. The deputy-mayor, if chosen by the members of a town council for that purpose, may be chairman in the absence of the mayor. Should both chairman and vice-chairman be absent, it is open to the members present to elect one of their number to the

vacancy, who will retain his position, even if the laggard chairman or vice-chairman turns up afterwards. Usually, however, the ordinary chairman is allowed a few minutes' grace before another member is elected to the chair. A chairman should always be punctual and regular in his attendance, and whenever possible should send notice to the meeting when he is likely to be absent or unavoidably late. As a matter of courtesy, though not of right, the chairman thus appointed often gives way to the regular chairman by vacating the chair, which operates as a virtual resignation.

In the case of meetings of creditors, the largest creditor is generally voted to the chair. In specially convened meetings—where there is no regular chairman: *e.g.* political demonstrations, religious and social gatherings—it is usually the custom for the conveners to select their own chairman beforehand, and to announce that fact on the notice or advertisement of the meeting.

The opening remarks of the chairman should be brief and to the point—tempered with discretion and wit. He should direct and control rather than lead a meeting.

It is desirable that the chairman should as a rule be elected without opposition. In any case, he must be duly proposed and seconded, and if there is more than one candidate, the decision of the meeting should be taken either by show of hands or (rarely) by poll. The actual putting the motion for the election of a chairman to the vote is generally done by the proposer or secretary, but it is much better for a temporary chairman to be appointed, especially when there is a contested election. Any objection to the nomination of a chairman should be made there and then.

"It is alleged that there was an irregularity in nominating the chairman; but it appears on a balance of the evidence that he was nominated and seconded. However, Mr. Bluck took the chair, and the meeting acquiesced and adopted him as chairman. In that capacity he was bound to declare, according to his means of knowledge, the sense of the meeting—that is the duty of the

chairman; and if it is alleged that he intentionally misrepresented the numbers, that is a fact which ought to be made out by the clearest evidence" (per Sir H. Jenner Just, in Cornwall *v.* Woods, 4 No. of Cas., p. 559).

Assuming that his appointment is regular and in order, the newly elected chairman then takes the chair and briefly thanks the meeting for the honour (if any) conferred on him.

Duties and Powers.

The chairman should be well acquainted with the statutory rules, standing orders, or regulations of the body over which he is presiding, not unduly straining their interpretation, but rather sacrificing the letter to the spirit. His decisions must be governed and controlled by the statutory rules, standing orders, or regulations.

His primary duties and functions are as follows:—

1. "To preserve order; and
2. "To take care that the proceedings are conducted in a proper manner; and
3. "That the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting" (Chitty, J., in National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159).

Duties.

1. To see that the meeting is properly constituted —*i.e.* there is a quorum of members present, and his own appointment regular and in order.
2. That all the requirements, whether of statutory rules, standing orders, or regulations, are duly observed.
3. That the items of business are taken in the order as set out in the agenda paper, unless that order is previously altered or is subsequently altered with the consent of the meeting.

4. That due and sufficient opportunity is given to those who wish to speak to express their views on the subject under debate or discussion. (Speakers should be called on by name.)

5. To allow no discussion unless there is some motion before the meeting.

6. To prevent irrelevant discussion, and forbid a second speech on the same motion except in the case of the proposer, who usually has a right to reply on the discussion.

7. To take the sense of the meeting by putting the motions and amendments in proper form. Voting should be by show of hands in the first place, and, if demanded, a poll should be taken. "The right to demand a poll being, therefore, as it appears to us, by the Common Law, an incident to the popular election of a person to an office, we think the electors cannot be deprived of it without a special custom of election inconsistent with such right or expressly excluding it by negative terms—viz. that no such right exists in the particular parish" (Tindal, C. J., in Campbell *v.* Maund, 5 A. & E., p. 878).

Powers.

"There is not, as far as I know, any case which has ever arisen to guide us in deciding how far the powers of a chairman extend . . . . Public meetings must be regulated somehow; and where a number of persons assemble and put a man in the chair they devolve on him, by agreement, the conduct of that body. They *attorn* to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. The chairman collects, as it were, his authority from the meeting" (per Jervis, C. J., Taylor *v.* Nesfield; *Wills on Vestries*, p. 29 *n*).

1. To preserve and maintain order. "It is no doubt the duty of the chairman of a meeting where a large body of people are gathered together to do his best to preserve order" (Pollock, B., in Lucas *v.* Mason, L. R. 10 Ex. 251).

2. "To decide and determine points of order submitted to him" (*re* Indian Zoedone Co., 1884, 26 Ch. D. 70).

3. To adjourn the meeting when it is impossible to maintain order.

It is said that at Common Law a chairman has power to adjourn a meeting, but the apparent authority therefor (R. *v.* D'Oyly, 1840, 12 Ad. & E. 139) clearly shows that the power of the chairman to adjourn was limited for the express purpose of taking a poll. In R. *v.* Wimbledon Local Board, 1882, 8 Q. B. D. 459, Brett, L. J., asked the question: Cannot a *meeting* be adjourned at Common Law? The power of adjournment, apart from regulations, seems to rest entirely with the meeting, *i.e.* a majority of those present, and not with the chairman, but such power must be exercised *bonâ fide*, and in the best interests of the meeting.

4. To remove or order the removal of disorderly persons.

5. To maintain his ruling on points of procedure. "When a chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling" (per Lopes, L. J., in Henderson *v.* Bank of Australasia, at p. 350).

6. Generally to conduct the meeting that the business thereof may be facilitated and the results clearly and well defined.

Unless there is provision in standing orders or rules, the chairman at Common Law—

(1) Has no casting vote (see *post*, p. 109); and

(2) Has no right to adjourn the meeting without the consent of the members present, unless the business for which it was convened has been done. "In my opinion the power which has

been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure" (Chitty, J., in National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159).

Right of Chairman to Vote.

By The Local Government Act, 1894, Section 3, a chairman of a parish council may be elected from the council or from other persons entitled to be councillors of the parish, and shall continue in office until his successor be appointed. This applies also to the mayor of a borough, but not to the chairman of a district council. In R. *v.* Jackson (1913, 3 K. B. 436) a chairman was elected from its own body by a parish council. At the next election of parish councillors he was defeated. At the annual meeting he presided as chairman, and voted for his successor in the chair. The votes being equal he also gave a casting vote in his favour, and declared him to be the duly elected chairman. It was held that the chairman of the old council continued in office until his successor was appointed, and was therefore a member of the new council, and that his votes were valid.

CHAPTER III.

THE GENERAL CONDUCT OF A MEETING.

I. *Religious, social, or political demonstrations, or meetings held for propaganda work.*

Generally, such meetings require and demand some organisation, much forethought and arrangement, considerable discretion and tact, and plenty of hard work.

A small active and working committee with secretary and treasurer should be appointed to arrange preliminaries and to ensure an orderly, successful, and well-planned demonstration. Great attention must be paid to detail, and every endeavour should be made to avoid those hitches which not only tend to upset the equanimity of the speakers, but too often provide ample opportunities to the scoffer and facetious for ridicule and banter.

The platform should be carefully planned—one person, one reserved seat; a few spare seats are always useful in case of unexpected visitors. The supporters of the chairman should know the position of their seats, some person being appointed to see that they get them. The unseemly jostling and shuffling of seats on the platform often mars the commencement of a meeting, and disturbs the temper and equanimity of the faithful. It is usual for the majority of the occupants of the platform to take their seats some ten minutes before the opening of the proceedings; the chairman, the speaker or speakers on the occasion, with the more prominent persons following on just before the appointed time of the meeting, with or without musical honours. The bearing or want of it of those on the platform is sedulously noted by the audience; it is so easy to excite ridicule and unnecessary comment and somewhat difficult to remove even an erroneous impression. This applies with greatest force to those occupants of the platform who are present before the meeting actually commences—music will however tend to distract the too critical attention of the waiting hearers. If the eye and the ear of the audience are

not displeased it is likely to be in a more receptive and impressionable mood. In any case, the chief speaker should be accorded a rousing reception or welcomed with an ovation of some sort, which should be spontaneous—apparent or real. If there is any music, it should be continued until all the platform occupants are comfortably settled.

It is essential that some definite and distinct arrangement should be made as to the length of the musical items, and some agreed sign or sympathetic communication with the organist or conductor as to cessation of music. Too frequently, an agitated and perspiring secretary is seen gesticulating in a frantic manner to an absorbed and oblivious organist or conductor to cease operations, causing some amusement to the audience and much consternation to the platform, all of which could be avoided by a little foresight and arrangement.

Again, the meeting should always commence at the advertised time, otherwise there may be shouts of "Time," or other signs of incipient disorder. And it is most important that the audience should be in a good humour at the commencement of the meeting at any rate, as their patience may be sorely tried later on.

The chairman on rising should open the meeting with a few remarks merely by way of introduction as to the purport of the meeting or the chief speakers. He should remember that "brevity is the soul of wit," and modify his speech accordingly. When the loquacious chairman is told to "sit down" he should, while blandly ignoring the interruption, take an early opportunity of resuming his seat. The order of the meeting should proceed exactly as pre-arranged, the speeches being few and none of them long, except that of the principal speaker.

Resolutions which are generally put to the vote at such meetings comprise—

1. Declaration of principles or policy.
2. Resolutions embodying such principles or policy to be sent to some authority or persons.
3. Votes of thanks to principal speaker and chairman.

II. *Meetings of statutory authorities (e.g. county, borough, district, and parish councils), other public bodies, and also meetings of religious, political, or social societies at which an elected or selected class of persons is invited.*

Such meetings—where the general public is excluded or have no right, if allowed to be present, to take any part in the proceedings—should be governed by by-laws, standing orders, or set rules. The nature of the rules depends upon the character and permanence of the body holding the meetings, but such rules should be clear, explicit, and free from any ambiguity. Rules, however imperfect, are better than none. They should be fair and reasonable, and interpreted in an impartial manner. From them the chairman obtains most of his power, and, if properly drawn up, they form an invaluable authority to which the chairman can appeal. But the chairman must know the rules and understand their purport and meaning, otherwise it may lead to unnecessary conflict with members of the meeting.

Rules should safeguard the general rights of the members of the meeting, and should not endeavour to crush the rights of minorities. When once agreed to, any alteration thereof should only be made after due, adequate, and sufficient notice has been given to the members concerned—in fact, there should be a standing rule that any such alteration should require notice of a definite time or should take place only at certain meetings.

Standing orders are of great assistance to chairman, members, and officials alike; they prevent misapprehension of the powers of the meeting, avoid confusion and disorder, and facilitate the dispatch and conduct of business.

Some societies adopt the rules of the House of Commons, *mutatis mutandis*, but they are somewhat complex and unworkable for ordinary meetings.

"It appears to me that meetings of this kind are not bound to model all their proceedings on the rules of the House of Commons. Those rules are very useful; they are the result of long experience, and when those rules are understood they work out admirably. But they are too

complex for the apprehension of ordinary shareholders . . . . I think the chairman is not to be caught suddenly by an expression of opinion, when he, without very much experience (of course, I am speaking of chairmen in general, not of this chairman), on the spur of the moment, has to come to some conclusion upon some proposal before the meeting; and I am prepared to hold—and do hold—that he is allowed to express his opinion in a deliberate way" (Chitty, J., in Henderson *v.* Bank of Australasia, 1890, 45 Ch. D., p. 339). But it is not necessary that a member should formally dispute the chairman's decision thus given in order to entitle him to afterwards impeach the validity of such ruling. The chairman *should know his business*, and if he deprives improperly a member of a right to which he is legally entitled, the validity of the proceedings may be afterwards impeached.

Meetings which are open to members of an elected or selected class may be classified as follows:—

1. The parent meeting where formal business is transacted is governed generally by some regular procedure in its proceedings. It is generally distinguished by a particular name—*e.g.* council, society, board, or governing body. It is the ultimate authority for all the business transacted. Unless there is an expressed or statutory delegation of authority (*e.g.* the Education Committee of the London County Council or a watch committee of a borough) no reports or resolutions of delegated bodies are binding until they have been confirmed by the parent body. The real business is usually delegated to—

2. Committees (of which the chairman of the appointing body should be a member), each committee having some specified work to do—*e.g.* finance, highway, education, law and parliamentary. In committee the proceedings are less formal, and discussion rather tends to elucidate the opinions of the members, and so to form

some *consensus ad idem* rather than to talk to the long-suffering reporter as in a public meeting. The powers of committees should be clearly set forth in their appointment. They report to their appointing body, and their wishes take the form of recommendations, which, if adopted by that body, are termed resolutions.

3. In turn, the committee may appoint sub-committees to deal with some specific branch of their work. The latter would report their recommendations to their appointing committees.

Committees.

A committee consists of certain persons elected or appointed, to whom any matter or business is referred, either by a legislative body or by any corporation or society: *e.g.* a committee of a town council under The Municipal Corporations Act, 1882, Sections 22 and 190.

"A 'committee' is hee to whom the consideration or ordering of any matter is referred either by some Court, or Consent of the Parties to whom it appertains" (*Terms de la Ley*).

"The term 'committee' means an individual or a body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for" (Pollock, C. B., in Reynell *v.* Lewis, 1846, 15 M. & W., p. 529).

"Originally each member was originally called a committee. These committees, when they meet, they elect one of them to sit in the chair in likenesse of the speaker" (*Coke's Institutes*, vol. iv., p. 11; also see *post*, p. 82).

Sub-Committee.—Delegating to a sub-committee does not imply a parting with the powers granted by the committee who grants the delegation, but confers an authority to do things which otherwise the committee would do itself. Such powers to the sub-committee can be resumed at any time by the appointing committee (Huth *v.* Clarke, 1890, 25 Q. B. D., p. 391).

CHAPTER IV.

GENERAL RULES.

Quorum, Adjournments, and Postponements.

STANDING Orders, By-laws, or Rules should, *inter alia*, contain some or all regulations as to the following:—

1. Place, day, and time of meeting, and provision as to the convening of special meetings.

2. Constitution of quorum.

3. Appointment of chairman or president, and deputy.

4. Powers of chairman—in particular whether he has a second or casting vote, and as to his power of adjournment, with or without the consent of the meeting. The chairman should have power to decide points of order and priority of speakers; and his decision should be final.

5. The order in which business (*i.e.* as set forth on the agenda paper) is to be transacted: *e.g.*—

   (1) Reading the notice of the meeting.

   (2) Minutes and their confirmation.

   (3) Correspondence.

   (4) Reports of committees and/or officers.

   (5) Finance.

   (6) Motions for debate (if proper notice has been given) in the order in which they appear on the agenda paper.

6. Conduct of debate.
    (1) Speaker to stand and address the chair.
    (2) Length of speeches.
    (3) No second speech allowed on the same question, unless by way of explanation, which must not introduce a new topic—this power to be left to the discretion of the chairman.
    (4) Irrelevancy or improper language.
    (5) Disorder. If a time limit is given to speeches, provision should be made for an extension of such time with the special permission of the meeting. The chairman should have power to deal with irrelevancy and improper language—*e.g.* directing such member to resume his seat.
7. Order in debate.
    (1) Motions and amendments thereto: notice and withdrawal.
    (2) How motions may be properly interrupted (see *post*, p. 34).
8. Voting.
    (1) Voice.
    (2) Show of hands.
    (3) Division.
    (4) Poll: how and when to be demanded, and regulations as to taking a poll.
9. Appointment of committees and their powers.
10. Adjournments of debate or meetings.
11. Rescission of resolutions, stating requisite time and notice.
12. Suspension of standing orders or rules.
13. How and when standing orders or rules may be altered.

14. Definition of duties of the secretary and/or other officers. Questions to officials: how regulated.

Suspension of Standing Orders.

Standing orders usually contain provision for their suspension in special circumstances, and generally require a certain specified majority of the members present.

Where there is no provision for suspension it is suggested that the authority of at least a three-fourths majority of the meeting should be forthcoming before temporarily suspending them, or a majority of the whole of the members.

Quorum.

In order that a meeting can be properly constituted there must be—

1. The proper person (or some duly elected person in his absence) in the chair.

2. A quorum of members present before any business can be transacted. Any business transacted when no quorum is present is invalid, and, if the standing orders, by-laws, or rules do not provide for a quorum, two persons will usually form a quorum (Sharp *v.* Dawes, 2 Q. B. D., p. 29). In calculating a quorum of creditors present at a first meeting in bankruptcy only those who have lodged proofs can be included; consequently, if there is only one creditor who has lodged a proof and he is present, he forms a quorum and constitutes a meeting (*re* Thomas, *ex parte* Warner, 1911, 55 S. J. 482; see also East *v.* Bennett Bros., *post*, p. 112, and Barron *v.* Potter, *post*, p. 75), although one person can by the appointing body be constituted a committee.

The Board of Agriculture, which technically consists of the Lord President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer, and a President, is said to "meet" when one person attends,

The President of the Board in November, 1911, stated in the House of Commons that the quorum of a meeting of the Board consisted of one person.

Adjournments of Meetings.

The chairman has no power to adjourn a meeting, unless with the consent of the members present, apart from express provision, or when the business for which it has been convened has been transacted. The chairman may, however, adjourn any meeting which is so disorderly that no business can be transacted thereat. It is well, therefore, to give the chairman specific power to adjourn a meeting at his discretion either for a short period or in the interests of order (see *post*, p. 49).

A chairman has no right to adjourn a meeting against the expressed wish of the members present, so as to prevent them proceeding to the transaction of the business for which they have been called together, although R. *v.* D'Oyly (12 A. & E., 139), goes to show that a statutory chairman may adjourn for a subsidiary purpose as for taking a poll, or where the meeting is so poorly attended as not to be representative of the general body.

"The conclusion of the verdict is general, whether the defendant has made a false return which depends on the validity of the adjournment, ... The power [of adjournment] must arise from the custom or Common Law. Here is no custom found, and I know of no book that shows how it stands at Common Law . . . . We must therefore resort to the common right, which is in the whole assembly when all are upon an equal foot" (Raymond, C. J., in Stoughton *v.* Reynolds, 2 Strange, p. 1046).

An adjournment may arise in four ways:—

1. Failure to make a meeting—*i.e.* quorum of members not present; although this is strictly a postponement. A meeting cannot be adjourned if there was in fact no meeting. The rules, by-laws,

or regulations of almost every corporate body provide for adjournment *ipso facto* to a certain fixed date if a quorum is not present within a certain time.

2. Failure to keep a meeting—*i.e.* a count out.

3. Adoption of motion for adjournment.

4. Action of chairman.

Postponement of Meetings.

A properly convened meeting should not be postponed. The proper course to adopt is to hold the meeting as originally intended, and then and there adjourn it to a more suitable date.

In certain cases it might be within the province of the chairman or president of the meeting to postpone it; at the same time it is desirable that such postponement should be with the consent of the members generally present. In all cases, notice of postponement should be sent to all who received the original notice to attend.

CHAPTER V.

THE AGENDA PAPER AND MINUTES.

The Agenda Paper.

THE order and nature of business to be transacted at a meeting is stated on an agenda paper, more familiarly called "the agenda." It should, as a rule, be circulated with the notice to the members who are entitled to be present at a meeting, and often the notice and agenda form one document.

The agenda should follow some common form, varying with the meeting and the business to be transacted.

Agendas are often drawn up in the following order:—

1. Appointment of chairman (if there is no regular chairman).
2. Verification of the correctness of the minutes of the previous meeting.
3. Correspondence (a *précis* of ordinary and routine letters; important letters in full).
4. Reports of committees and/or officers (reports should be given *in extenso*).
5. Finance (consideration of accounts and financial questions).
6. Any special business (the nature of which should be specifically and explicitly stated).
7. Motions (of which due notice has been given).
8. General business.

Under general business an opportunity may be taken to deal with any minor matters which could not conveniently be taken before. If there is any opposition to such a course

in relation to any particular piece of business, it should be adjourned so that full notice of the matter might be given.

In preparing the agenda, care should be taken to include therein all the business to be transacted, with sufficient detail to enable the members to grasp what it means.

An agenda should be clear and explicit, free from ambiguity, informative, and in a summary form.

It should enable the members to ascertain what matters will be discussed, and, if circulated beforehand, gives them an opportunity of forming some opinion as to the course which they will adopt at the meeting. A properly drawn-up agenda prevents many questions being put to the chair, considerably shortens a meeting, and helps to get the sense of the meeting in an intelligent and expeditious manner. Further, a well-arranged agenda prevents much confusion and irritation through members speaking on insufficient facts. It is generally advisable to consult the chairman of the meeting in preparing the agenda.

If ordinary routine business is being transacted, notes of the decisions arrived at may be made on the agenda, particularly when a wide margin or space is left for that purpose; but it is generally advisable to have a rough minute book, so that, when necessary, a detailed and more correct record of the proceedings might be taken.

The agenda should be filed and kept for reference, and, if bound, should form a separate volume, and not be placed with the minutes.

Minutes.

A true and correct report should be taken of the proceedings of every meeting, and also of the resolutions adopted thereat. On the other hand, a clear distinction should be rigidly drawn between a report and minutes of a meeting. The former mainly consists of what was said, and the latter what was done: *e.g.* resolutions and decisions of the meeting should be minuted, the speeches or arguments

in connection therewith may be included in a report, but not in the minutes. Any inaccuracy in the minutes is fatal to its value and usefulness.

The record of the proceedings should be—

(1) An exact account of what was actually agreed upon, and nothing more;

(2) Sufficiently detailed and complete, so that a member who was absent could fully understand what was done at that meeting;

(3) Concisely and precisely minuted;

(4) Free from ambiguity and absolutely impartial.

The minutes should contain, *inter alia*—

(1) Names of the members present (the occasional practice of including the names of paid officials is generally to be deprecated, though in some cases it may be desirable to state that they are in attendance);

(2) Full and exact details of all contracts and questions involving financial considerations;

(3) The exact words of all resolutions which have been adopted;

(4) Appointment, salaries, powers, and duties of officials (these should be very explicit);

(5) Instructions to officials, and all transactions authorised at that meeting.

Minutes should be carefully indexed and when not in actual use should be kept in a fire-proof safe. Where the business is of some importance, copies of the minutes should be circulated with the succeeding notice of the next meeting.

It is important that the minutes should be signed by the chairman, either of the meeting at which they were taken or at which they were verified—generally the latter.

No alteration should be made in the minutes except to correct obvious errors. Occasionally a *bonâ fide* mistake is made, when the correction should be made only with the consent of the meeting. Any discussion on the minutes, except as to their accuracy, is out of order, and the chairman should rule accordingly.

Questions arising out of the minutes are permissible if only for information and not for discussion.

It is unwise for a chairman to sign the minutes without getting them verified as correct by a meeting. The usual method is to bring up the minutes at the next succeeding meeting, when they are read if not previously circulated. Very often, however, they are taken as read. The chairman then asks whether in the opinion of the meeting they are a correct report of the proceedings, and, if the answer is in the affirmative, he formally signs them. It is not necessary that he should have been present at the meeting at which they are taken. If there is a conflict of opinion as to their accuracy, an amendment to the motion of their correctness, embodying the suggested alteration, should be put to the meeting, and it is obvious that those who were not present at the preceding meeting should not take part in the discussion or vote.

In any event they are only *primâ facie* evidence of what was done at the meeting. Minutes are not exclusive evidence of what takes place at a meeting. An unrecorded resolution may be proved *aliunde* (*i.e.* from another place or person) (Knight's Case, 1867, L. R. 2 Ch. 321). In *re* Fireproof Doors, 1916, 2 Ch. 142 (see *post*, p. 154). When minutes are duly signed by the chairman, they are *primâ facie* evidence of what has been done at the meeting, until the contrary is proved. The confirmation of the minutes by a meeting *merely verifies their accuracy*; it does not necessarily mean that such minutes are adopted or that the resolutions therein are confirmed or ratified (see *post*, p. 155 *et seq.*).

CHAPTER VI.

DISCUSSION AND DEBATE.

THE conduct and control of the discussion or debate is mainly in the hands of the chairman, who must be discreet, impartial, and tactful in its management. The following rules should be observed:—

1. Every member who so desires should have one opportunity of speaking upon each motion; no second speech to be allowed except that the mover of the original motion should have the right of reply.
2. The order in which members should speak is determined by the chairman, who should endeavour to ascertain either the implied or express wishes of the meeting thereon, any conflict of opinion being settled by vote of the meeting. The chairman should call each member in turn by name whom he wishes to speak.
3. The chairman should impartially allow supporters and opponents of a motion equal opportunities of speaking, and have some regard to the rights of minorities.
4. The chairman should insist on members refraining from unseemly interruptions or making a running commentary on the remarks of the speaker, and from the holding of informal sub-committees or private conversations *sotto voce* during debate, or any other conduct tending to disturb the meeting.
5. Points of order which may be raised by any member, whether he has previously spoken or not, should be taken immediately they are brought to the notice of the chairman. Explanations, which should be brief and to the point,

must not introduce new topics. The chairman should not allow a speech or debate to follow an explanation, and unless he is firm about this a wrangle and possible disorder generally follows. The chairman's decision on points of order is final, in which he should have the loyal support of the meeting.

6. Members should realise that support of the chairman and the maintenance of order expedite the transaction of business, and that the conduct of a disorderly member, if unchecked, may result in a disorderly and ineffective meeting. A want of support to the chairman often makes the subject of discussion a vehicle for personalities, to the detriment of good feeling and good taste.

7. Discussion must be relevant to the subject under debate. Members who ignore this rule, or who use offensive language, or impute improper motives to colleagues, should be sharply dealt with by the chairman, and, in the event of persistent disregard of the authority of the chair, should be requested to retire from the meeting, and, if necessary, removed therefrom.

8. The rising of the chairman should be accompanied by silence, and any member speaking should immediately resume his seat.

Motions and Amendments.

All motions and amendments should be—

(1) In writing, signed by the mover, and handed to the chairman of the meeting, unless they are formal motions: *e.g.* That the meeting do proceed to the next business;

(2) Relevant to the business for which the meeting is called;

(3) Duly proposed and, where it is the practice of the meeting or is required by the rules, be seconded; and

(4) Comply with standing orders as to notice.

In the House of Commons every motion does not require to be seconded, but an amendment does.

"In my opinion, if the chairman put the question without its having been either proposed or seconded by anybody, that would be perfectly good" (per James, L. J., in *re* Horbury Bridge Coal Co., 1879, 11 Ch., at p. 118).

Motions and amendments are in the control of the meeting, and cannot be withdrawn unless with the consent of the members present. Motions which are not moved by the person who has given notice therefor, or by some other member for him, are dropped motions, and cannot be revived without a new notice. Motions should be discussed in the order in which they appear on the agenda paper, unless the members present wish otherwise. In case of conflict of opinion the question should be decided by vote. The chairman has often the power to divide a motion into separate parts, and to take a distinct vote on each. A motion which has been negatived may not be brought forward again at the same meeting, but may usually be brought forward again after a specified lapse of time at a future meeting on the prescribed notice being given.

CHAPTER VII.

ORDER IN DEBATE.

WHEN a motion has been duly moved and seconded, discussion thereon may be interrupted by some or all of the following further motions:—

1. To amend the motion.
2. To move the previous question.
3. To proceed to the next business.
4. To move the closure [That the question be now put].
5. To postpone the consideration of the question.
6. To adjourn the debate.
7. To adjourn the meeting.
8. To defer consideration to a further meeting, or, if dealing with a recommendation of a committee, to refer it back for further consideration and report.

Amendments are generally of four kinds:—

1. To omit certain words.
2. To omit certain words and insert or add others.
3. To insert certain words.
4. To add certain words.

Suppose the following motion has been duly moved and seconded: "That, having regard to the additional duties of the secretary, his salary be increased from £250 to £275 per annum as from the 1st of January, 1915," the following amendments may then be moved:—

1. To omit the word "additional."
2. To omit "£275" and insert "£300."

3. To insert the words "and experience" after "duties." (This amendment should be put to the vote before No. 2.)

4. To add the following words: "provided a dividend of not less than 10 per cent. be paid for the half-year ending 31st August, 1914."

Presuming each amendment in turn has been carried, the original motion would, as amended, read as follows:—

"That, having regard to the duties and experience of the secretary, his salary be increased from £250 to £300 per annum as from the 1st of January, 1915, provided a dividend of not less than 10 per cent. be paid for the half-year ending 31st August, 1914."

This should be put as a substantive motion to the meeting, and resolved accordingly; if the substantive motion be not carried there is no resolution.

It would not, of course, be necessary to put the original motion again as a "substantive motion" unless altered by amendment.

An Amendment

(1) Must not be a mere negative—*e.g.* that having regard to the additional duties of the secretary, his salary be *not* increased, &c.—since the same result could be obtained by voting against the original motion;

(2) Should be relevant and intelligible as regards the original motion;

(3) Should be formally moved and according to general practice in meetings where each member has one vote only, seconded; otherwise, if not put to the meeting, it will fall to the ground. If, however, it has actually been put to the meeting and voted on, although unseconded, it cannot be rejected simply because it had no seconder. "I think that the objection that the

amendment was not seconded cannot prevail, it being admitted that it was put and voted upon" (Jessel, M. R., in *re* Horbury Bridge Co., 11 Ch. D., p. 118);

No amendment can be brought forward after the close of the poll (R. *v.* Roberts, 3 B. & S. 495).

4. Should be in writing, clearly stating the proposed alteration, signed by the mover, and given to the chairman;

5. May be moved or seconded by any member who has not already spoken on the motion; after which all members have a right to speak;

6. Must not be moved after the question is put;

7. Gives no right of reply to the mover;

8. Cannot be withdrawn without the consent of the meeting;

9. If there is an equality of votes and the chairman does not exercise his casting vote, the amendment is deemed not carried.

1. No member can move more than one amendment to the same motion, though standing orders frequently provide that he may. The meeting must not be asked to vote on two or more amendments at the same time. The chairman should, therefore, only allow one amendment to be before the meeting at a time. When several amendments are before the meeting it is generally the practice to take them in the order in which they will affect the main question, and not in the order of time of moving. It is, however, usual not to allow a second amendment until the first has been disposed of. Though there may be an amendment of an amendment it generally leads to confusion, and should be avoided. No amendment should be allowed relating to those parts of the main question which have already been agreed to. If the amendment is not carried, the original motion remains to be further amended or discussed. When an amendment has been

put to the meeting and carried, it must be put a second time, embodied in a substantive motion, which supersedes the original motion. This substantive motion can be amended and discussed as if it were the original motion. Any amendment which so amends the substantive motion that it becomes the original motion should not be allowed. It sometimes happens that an amendment which has been carried as an amendment is lost as a substantive motion, in which case the original motion is not revived. This is a device which is used to get rid of the whole subject under discussion.

It is not essential to follow the rules of the House of Commons in dealing with amendments. The observance of strict formality in putting motions and amendments thereon to vestry meetings is unnecessary ; it is enough if conflicting propositions be so put to such a meeting that those present understand what it is that they are called on to decide (*ex parte* Stevens, in *re* The Vestry of the Parish of Hammersmith, 16 J. P. 632).

2. *To move the previous question.*—When the main question, but not an amendment thereto, is under discussion, it is competent for any member who has not spoken on the main question to move the "Previous Question," in order to get rid of a motion which is considered inconvenient or unwise for any decision to be taken thereon. If duly seconded, discussion may follow, but amendments to it may not be moved. The previous question takes precedence of all amendments, and may take the form of "That the question be now put"; in which case the supporters of the "Previous Question" (which is a device for shelving the matter for the time being) vote *against* it, and if successful the main question is got rid of as regards that meeting. The more general way of putting the previous question is in the form: "That the question be not now put." If this motion is not carried, the main question is then put to the vote at once without further discussion. On the other hand, if it is carried, the main question cannot be put at that meeting, though it may be brought up at a subsequent meeting.

The object of the previous question is to avoid the putting of the original resolution to the vote by considering whether or not the original resolution shall be put to the vote at all.

No amendment may be moved to the "Previous Question," though it may be superseded by a motion for adjourning the meeting.

3. *To proceed to the next business.*—This motion, which has the same effect and object as the "Previous Question," may generally be moved at the close of any speech, and, if seconded, is put forthwith without speech or debate. If carried, the subject under discussion drops; if lost, there is generally a limit of time—*e.g.* half an hour—before this motion can be moved again concerning the same subject of debate.

4. *To move the closure*,* familiarly called "the gag," is generally in the form: "That the question be now put." This is moved and put in the same way as the preceding motion. If carried, the motion under discussion is put to the vote. The object of this motion may be either to burke discussion or to get a decision on a question which has been reasonably or sufficiently debated.

"As to the closure, I think that if we laid down that the chairman, supported by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority, or even a member or two, to tyrannise over the majority. The case has been put by Mr. Cozens-Hardy as the terrorism of the majority. If we accepted this proposition we should put this weapon into the hands of the minority, which might involve the company in all-night sittings. That seems to me an extravagant proposition, and in this particular case there seems to have been nothing arbitrary or vexatious on the part of the chairman or of the majority" (Chitty, L. J., in Wall *v.* The London and Northern Assets Corporation, 1898, 2 Ch., p. 483).

* For full note on "closure," including "guillotine" and "kangaroo," see *post*, p. 181.

When the views of the minority have been heard it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote. The chairman often has some discretionary power as to accepting a motion for the closure, which is an antidote to obstruction or delay. He should, however, have some regard to the rights of minorities, but at the same time wield it as a useful weapon to defeat mere obstructive tactics.

5. *To postpone the consideration of the subject.*—Before putting this motion to the vote the mover of the original motion should be allowed the right of reply.

6. *To adjourn the debate.*—Here, again, the mover of the original motion is usually allowed the right of reply, after which no further debate is permitted. It is the practice to give the person who successfully carries this motion the right of re-opening the debate when it is again resumed at the same or the next meeting.

7. *To adjourn the meeting.*—This motion may be moved at the close of any speech or conclusion of any business. The mover of the question under debate at the time is allowed some right of reply. Unless another time is fixed, it is usual to resume the debate or business thus interrupted at the next ordinary meeting, but it is desirable to have this point clearly understood by way of motion.

8. *To refer the recommendation back to the committee.*—When a motion emanates from a committee whose province it is to make recommendations on certain defined subjects, it is sometimes referred back to the committee for further consideration, having regard to more recent information which may not have reached the committee, or it may be that other circumstances have intervened since the committee met which may render it inadvisable to adopt the recommendation. Further, the recommendation may not meet with the approval of the parent body, which latter may not possess the requisite knowledge to amend

the motion. In any case, it is more courteous to give the committee an opportunity of submitting another recommendation.

Resolutions: Their Rescission.

A resolution cannot be rescinded at the meeting at which it is adopted. Statutes, by-laws, and standing orders, whenever applicable, generally provide for the rescission of motions. It is not unusual to allow committees to submit at any time recommendations defeating in whole or in part their previously adopted recommendations, and thus effecting rescission of these. Even when express provision is not made it is essential that—

1. Due and adequate notice be given to all members concerned.
2. Some limit of time be allowed to elapse before a motion can be rescinded: *e.g.* six months.
3. A special meeting be called for this particular purpose at a time and place convenient to those who supported the resolution.

When a resolution has been rescinded it is most important that explicit notice of the fact be communicated to all persons whom it may concern, however remotely.

Voting.

The usual methods of obtaining the sense of a meeting are—

1. Voice. This is only adopted when it is obvious that the meeting is practically unanimous.
2. By show of hands, which is generally adopted in the first instance: one hand, one vote. *Primâ facie*, the declaration of the chairman as to the correctness of the result is decisive; but any objection as to its accuracy should be made at once, and a poll demanded; otherwise his declaration will be conclusive, unless there has been fraud or obvious mistake.

3. By a division: *i.e.* a regular count of the members for and against the motion. In this case members separate themselves by going into different rooms or lobbies, the counting of members being delegated to tellers, one or two being appointed for each side of the question.

4. By a poll.

"I am clearly of opinion that the demand for a poll must be made at once, as soon as the preliminary show of hands is over. When an election is taken by a show of hands, the chairman is to form a judgment at once to the best of his opinion as to who is elected; and, if it is the intention to test his decision in a more formal manner, this must be done at once" (Williams, J., in R. *v.* Vicar of St. Asaph, 52 L. J., Q. B. D., p. 672).

"The Common Law right on that subject is generally understood to be that any voter, however satisfied with the correctness of the declaration on the show of hands, yet may appeal from it to the whole body of electors, and keep a poll open till all have had the opportunity of attending to record their suffrages" (Denman, C. J., in R. *v.* The Vestry of St. Pancras, 11 A. & E., p. 26).

When a resolution is put to a meeting the persons present may take one of three courses.—They may vote for or against it or, not wishing to express a positive opinion on the question, refrain from voting at all. This being so those who do not vote may, by not doing so, turn the scale in favour of the accused member of the club (Jessel, M. R., in Labouchere *v.* Wharncliffe, 1879, 13 Ch.D. at 354). In this a two thirds majority was necessary of those present: 117 persons were present; 115 voted, of whom 77 voted for expulsion, which was in consequence held not to be a two thirds majority.

The Chairman's Vote.—The chairman has one vote like the ordinary member and may also, if standing orders specifically allow, have a second or casting vote. It is

usually unwise for the chairman to vote save when there is an equality of votes, and he should then, except in very special circumstances, give his vote against the motion so as to prevent it being carried against such a strong adverse feeling. In such cases it is wiser to leave it open for further discussion. If a chairman has no casting vote and there is an equality of votes, it appears to be somewhat irregular for him to exercise it after the voting for and against the motion is completed, as this vote would be in the nature of a casting vote. Should he, however, discover that those against the motion are equal to those for it, he should, for the foregoing reason, vote in the negative before announcing the numbers against the motion.

CHAPTER VIII.

PRIVILEGE IN SPEECHES.

THE term "*privileged communication* comprehends all cases of communications made *bonâ fide* in performance of a duty, or with a fair and reasonable purpose of protecting the interests of the party using the words" (Maule, J., in Somerville *v.* Hawkins, 10 C. B., p. 589) : provided the words are not uttered maliciously.

"*A privileged communication* is one made on a privileged occasion, and fairly warranted by it, and not proved to have been made maliciously.

"*A privileged occasion* is one which is held in point of law to rebut the legal implication of malice which would otherwise be made from the utterances of untrue defamatory language . . . .

"*Malice*, in fact, is not confined to personal spite and illwill, but includes every unjustifiable intention to inflict injury on the person defamed, or, in the words of Brett, L. J., 'every wrong feeling in a man's mind'" (Lindley, L. J., in Stuart *v.* Bell, 1891, 2 Q. B., pp. 345 and 351).

The following statements are privileged, provided they are made without malice:—

1. "*Communications made in the discharge of some social or moral duty*" (Stuart *v.* Bell, *ante*).—"Then comes the question whether this was a privileged occasion. Where, as in this case, a body of persons are engaged in the performance of the duty imposed upon them—of deciding a matter of public administration, which interests not themselves but the parties concerned and the public—it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bonâ fide* in the sense that he is using the privileged occasion for the proper purpose, and not abusing it . . . . If a person on such an occasion states what he knows to be untrue,

no one ever doubted that he would be abusing the occasion . . . . But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held by a jury to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held—and, I think, rightly—that a jury is justified in finding that he has abused the occasion. Therefore, the question seems to me to be whether there is evidence of such a state of mind on the part of the defendant. It has been said that anger would be such a state of mind, but I think that gross and unreasoning prejudice, not only with regard to particular people, but with regard to a subject in question, would have the same effect" (Esher, M. R., Royal Aquarium &c. *v.* Parkinson, C. A., 1892, 1 Q. B., pp. 443 and 444); or

2. "*On the ground of an interest in the party making or receiving them*" (Stuart *v.* Bell).—"If the communication was of such a nature that it could be fairly said that those who made it had an interest in making such a communication, and those to whom it was made had a corresponding interest in having it made to them—when those two things co-exist, the occasion is a privileged one" (Esher, M. R., in Hunt *v.* Great Northern Railway, 1891, 2 Q. B., p. 191).

Publication.

1. Privilege will, however, be lost if there is *unnecessary publication*. "A communication sufficient for the purpose might have been made in measured language. The want of proper caution had rendered the publication actionable as being published to the world at large. Every unauthorised publication to the detriment of another was, in point of law, to be considered as malicious" (Ellenborough, C., in Brown *v.* Croome, 2 Starkie, p. 301).

"When once the learned Judge has laid down that the occasion was privileged, the only question for the jury to consider was whether the defendant acted from a sense of

duty, or was actuated by some improper motive, that is, that he acted maliciously" (Collins, L. J., in Clark *v.* Molyneux, 1877, 3 Q. B. D., p. 249).

And so if reporters are present by express invitation at a meeting the privilege is lost; or if a report is sent to the Press.

"If a person whose duty it is to make a statement to certain persons calls in other persons to whom he owes no duty to make the statement, in order that those other persons may hear it, I should be inclined to say . . . . that there would be evidence of malice in his making it in the presence of others who might promulgate it" (Esher, M. R., in Pittard *v.* Oliver, 1891, 1 Q. B. D., p. 477).

"When, indeed, an opportunity is *sought* for making such a charge before third persons which might have been made in private, it would afford strong evidence of malicious intention, and thus deprive it of that immunity which the law allows to such a statement when made with honesty of purpose" (*Per cur.* in Toogood *v.* Spyring, 1834, 1 C. M. & R., p. 194).

2. *The mere presence of reporters, however, does not necessarily destroy privilege.* "The mere fact of a third person being present does not render the communication absolutely unauthorised" (*Per cur.* in Toogood *v.* Spyring, 1834, 1 C. M. & R., p. 194).

"The presence of these people [reporters] left his duty to discuss the matter untouched; the occasion was privileged for the performance of that duty, and the privilege was not taken away by the presence of such people under such circumstances" (*i.e.* reporters being present in accordance with the regular custom of the meeting) (Esher, M. R., in Pittard *v.* Oliver, 1 Q. B. D., p. 478).

CHAPTER IX.

THE PRESERVATION OF ORDER AT PUBLIC MEETINGS.

DISORDER at public meetings generally arises from one or more of the following causes:—

1. Irrelevant or violent interruptions.
2. Organised opposition which has determined to break up the meeting.
3. Tactless and weak chairman.
4. Injudicious and intolerant speakers.

1. *Irrelevant or violent interruptions* require to be dealt with in a firm and tactful manner by the chairman. Some interruptions are welcomed. They agreeably vary the monotony of a meeting, and often give the speaker an opportunity of relieving his speech by a well-delivered retort. But unless kept within due bounds, disorder generally follows. A somewhat common practice at certain meetings, particularly those held in the open air, is that of the hearers making a running commentary on the speech while it is being delivered. Mr. Balfour in the House of Commons on 16th July, 1909, said: "I have observed with regret in the course of the present Parliament a growing habit of running commentary upon speeches and arguments that are being addressed to the House."

This habit, which is apparently growing, has its advantages. It undoubtedly tends to enliven the meeting, promptly extinguishes the bore, and abruptly brings to a close the speech of the person who has finished what he has to say, but will not resume his seat. At the same time, it usually upsets the sequence and order of the prepared speech, and not infrequently brings forth disorder

and confusion. The chairman should use his discretion, and insist on questions being asked at the close of the speech, and also see that sufficient and proper time is allowed therefor. Sometimes he should allow an opponent to reply, but it all depends on circumstances and the temper of the audience. Of course, the chairman is not bound in all circumstances to allow questions or allow opponents to speak if time will not permit.

2. *Organised opposition* is very difficult to deal with, especially when the conveners of the meeting are unprepared for it. Generally, there is some indication beforehand, when it is folly not to be fully ready for it. People who merely come to disturb a meeting generally prefer the back of the room, so that, should their courage fail them, there is a convenient exit for escape in time of trouble. It is a good plan to put probable disturbers in the front of the room, keeping them apart as much as possible. If they know there is a stronger force in the rear they will often come to the conclusion that discretion is the better part of valour. Again, if the disturbers are all together it impedes the work of the "chucker-out," and his advent generally leads to a free fight, uproar, and disorder.

Stewards of public meetings should be men of good physique, good temper, and not afraid of a row. They should know their business thoroughly, and it is wise for them to meet and have some preliminary understanding on the matter.

An audience will, as a rule, be kept in good temper when they see an interrupter removed in an expeditious and effective way; such an expulsion will inevitably quell the spirits of the remaining disturbers, and repair the broken harmony of the meeting. But when a stalwart interrupter defends himself with vigour, and there is an unseemly struggle, the feelings of the meeting will often veer round to him and encourage his weaker associates. After all, it appeals to the sporting instinct when a man baffles half a dozen perspiring stewards; and when the

latter begin to lose their heads, and not play the game, there will be the inevitable cries of "Cowards!" "Shame!" and the like. It is bad enough to have a disorderly person in a meeting, but to fail to remove him is disaster.

In regard to the dominant sex great discretion, tact, firmness, and strategy are necessary, and even the best combination of these often yields indifferent success. It is notorious that women heavily score at interruptions at meetings; they have plenty of moral courage, and will stick at nothing if they believe they are in the right. As their courage need never be doubted, it is an effective, though somewhat ungallant, plan to keep them altogether at the back of the room in order that they can be easily removed when trouble ensues. To separate them is foolish, since interruptions coming from many parts of a room are most difficult to deal with, and do more than anything to break up a meeting. It is said that suffragette interrupters at public meetings have arranged, where possible, to have in future male sympathisers seated on either side, whose duty it will be to protect their fair but clamorous charges against ejection, and this plan of dotting audiences with groups of three, each interrupter with her two cavalier attendants, where tried, has been successful in preventing a meeting falling through with *ennui* or boredom. On the other hand, it is astonishing how often potential interrupters of the other sex, when separated from their fellows, are subdued and orderly. Stewards for removing such women should by preference be experienced and active married men who have some knowledge of the ways of the sex, full of resource and tact, ready for any emergency, possessed of a persuasive tongue, and able to remove a woman in a prompt and effective way without hurting her. As it is practically impossible to keep a woman out of a meeting when she has determined to get in, it seems better policy to admit her under strict surveillance than to hear a "voice" at unpropitious moments from the recesses of an organ, the roof, or some other inconvenient place of removal.

Kipling says "the female of the species is more deadly than the male," and this is, at all events, true as to her opposition at public meetings.

"So it comes that Man the coward, when he gathers
to confer
With his fellow braves in council, does not leave
a place for her
Where, at war with Life and Conscience, he uplifts
his erring hands
To some God of Abstract Justice—which no woman
understands."

—*The Morning Post*, 10th October, 1911.

3. *A weak and tactless chairman* may cause disorder at a meeting. If he is not fair, firm, competent, or impartial, trouble may easily arise. He should carefully observe the spirit and temper of his audience, and act accordingly; quelling at the instant any signs of incipient disorder. At the same time he should allow the audience to have a little of their own way. An audience objects to being domineered over, but does not mind being dominated in a pleasant yet masterful way.

When disorder appears to be imminent it is unwise for the chairman to get angry and talk about expulsion and the police; rather, he should endeavour to soothe the audience by a few well-chosen remarks, and appeal for fair play; above all, not appear to be injured or insulted. In a public meeting, when he has ruled on a point of order, he should abide by his decision, even though he may be wrong.

The chairman, again, can remove one not uncommon cause of disorder, by seeing that the meeting commences at the duly appointed time.

As to well-conducted opponents, it is a great mistake to browbeat them; courtesy to them costs little, and is worth much.

To ask the stewards to remove disorderly persons should be a last resource, and only adopted when all other means have failed. On the other hand, if the nature of the meeting permits it, it is a good plan to adjourn the meeting for a short time—say, half an hour—when a change of scene, and a little ventilation of the room, may bring peace and concord.

4. *Injudicious and intolerant speakers*, too, are responsible for disorder in some cases. An audience requires attention, respect, and courtesy. The successful speaker endeavours to understand his hearers, to interest and inspire them, to imbue them with his spirit and ideas, and to carry them with him. If there is an element of opposition present partisan feeling should be somewhat subdued. Insulting remarks respecting the opinions of those opposed to the speaker may lead to recriminations and disorder. Any suspicion of unnecessary dignity or hauteur should be avoided.

It is essential to keep the audience in good humour with themselves and the speaker. At first, it is undesirable to take too much notice of slight interruptions, but if they continue the speaker should appeal to the sweet reasonableness, fair play, and good sense of the meeting, neither scolding nor indulging in a fit of bad temper.

Above all, it should be remembered that audiences are governed rather by impulse than by reason.

At meetings when the public are present by licence, disorderly persons may be removed; and where a breach of the peace ensues the police may be called in, and the offender given into custody. Even if a person has paid for admission to a meeting, he may be expelled—his remedy being breach of contract, and not damages for expulsion.

CHAPTER X.

LAW AND PRACTICE OF POLICE RELATING TO THE PRESERVATION OF ORDER AT PUBLIC MEETINGS.

HAVING dealt with some methods of preserving order and preventing disorder, it only remains to consider the legal aspect of order at public meetings. The chairman's duty was laid down by Chitty, J., in National Dwellings Society *v.* Sykes (1894, 3 Ch. 159): "It is the duty of a chairman to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; and if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object."

In the report of the Departmental Committee of the Home Office, with respect to the preservation of order at public meetings (1909), the following definition and statement of law appears therein:—

We consider that for the purposes of the present inquiry a public meeting may properly be defined to include any lawful meeting called for the furtherance or discussion of a matter of public concern to which the public, or any particular section of the public, is invited or admitted, whether the admission thereto is general or restricted. This definition would seem to include any meeting called for any political or municipal purpose to which the public are admitted, whether by ticket or otherwise. It would also include many non-political meetings, such as bazaars, public lectures, and the like, but not shareholders' or committee meetings to which the public are not admitted.

It should be remembered that a public meeting held indoors is not necessarily, or indeed usually, held in what is legally a public place. If a public building is hired, or even lent, to an association

or other section of the public for the purposes of a meeting, it becomes in law for the time being a non-public place. Meetings held in assembly rooms, hotels, schoolrooms, &c., are also held on what are in law private premises.

This distinction has a very important bearing on the questions referred to this Committee. Where a public meeting is held on private premises, as defined above, the persons present are only there on the invitation of the promoters of the meeting, and by their leave and licence. They have no more right of access to the premises, and no more right to remain on them when requested to leave by the promoters, than if they had been invited to enter a private house by the occupier of that house. If they refuse to leave when called on to do so by the chairman or representatives of the promoters they become trespassers, and they may after a reasonable interval be removed (without undue violence) by the promoters of the meeting or by their authorised agents, and this would seem to be the case even where the person so requested to leave has paid for admission to the meeting, and where his admission money is not returned. It is this Common Law right of expelling trespassers which is frequently, in the case of continued interruption, exercised by the stewards of a public meeting at the direction of the chairman, who for this purpose represents the promoters of the meeting. So long as no undue violence is proved, the stewards so acting are not liable in damages for assault.

The status of the police in respect of order at public meetings has next to be considered. Their duties in this respect are not defined by any Public Statute, but are, generally speaking, "to keep the King's peace." The members of a police force are sworn in as constables, and are vested with all the powers and liabilities belonging by Common Law to the ancient constables. Apart from felony or suspicion of felony, which we need not deal with here, constables have no general powers at Common Law to arrest, except when a breach of the peace is committed. There are, however, numerous Acts which empower constables to arrest and take the names of offenders, and we have had cited to us an instance of a local Act (applying to Birmingham), which empowers them to arrest any person found committing any offence, punishable either on indictment or on summary conviction.

In the case of highways and places to which the public have ordinary access, the police have large powers of dealing with disorder and obstruction; but in the case of meetings held on private premises, whether for public purposes or not, the police have no power to enter except by leave of the occupier of the premises or promoters of the meeting, or when they have good reason to believe that a breach of the peace is being committed. It is no part of the duty of the police to eject trespassers from private premises. They may (acting in their capacity of private citizens) assist to eject them, if asked to do

so by the occupier of the premises or the promoters of the meeting, but they are under no obligation to do so. They may, and, indeed, are bound to intervene in the case of an actual breach of the peace; and they may arrest without warrant a person whom they have seen committing a breach of the peace; and even if they have not seen any such breach committed they may arrest without warrant a person charged by another for such breach, if there are reasonable grounds for apprehending the continuance or immediate renewal of such breach. We may further point out that within private premises a policeman taking part in the preservation of order is, generally speaking, under the same liability to an action for damages as a private person; except that under The Public Authorities Protection Act, 1893, legal proceedings against the police are subject to some technical limitations.

THE LAW AS TO EXPULSION FROM MEETINGS.

1. Refusal to leave a meeting held in a private place (*e.g.* halls, assembly rooms, and schoolrooms) when called on by the chairman or representatives of the conveners makes a person a trespasser.

2. After a reasonable interval such person may be removed without undue violence by the authority of the organisers of the meeting, even if he has paid money for admission, which money has not been returned.

In Wood *v.* Leadbitter (1845, 13 M. & W. 838), which was an action for trespass for assault and imprisonment, the steward of the Doncaster races sanctioned the issue of tickets of admission to the grand stand. These were sold for a guinea each and entitled the holders to come into the stand and enclosure round it during the races. The plaintiff purchased one of these tickets, and came into the enclosure on race days. The defendant, by order of the steward, desired him to leave it, and on his refusing to do so the defendant, after a reasonable time had elapsed for his quitting it, put him out, using no unnecessary violence, but not returning the guinea.

Held—The jury were properly directed to find the issue for the defendant. A right to come and remain for a certain time on the land of another can be granted only by deed; and a parol licence to do so, though money be paid for it, is revocable at any time, and without paying back the money.

The Rights of Theatre Goers.

This decision has recently been distinguished in Hurst *v.* Picture Palaces (1913, 30 T. L. R. 98, affirmed C. A. 1914, 30 T. L. R. 643), which lays down the following proposition: that if a visitor to a theatre has paid for his seat he has a right to retain the seat so long as he behaves himself and keeps within the regulations laid down by the management (per Channell, J.). The case of Wood *v.* Leadbitter (*ante*, p. 49) was now obsolete on the ground that there was now a contract between the theatre proprietors and the taker of a seat without the necessity for a seal. And if the seatholder had paid for his seat and behaved himself quietly he had a right to see the show. It might be called an equity, but whatever it was the visitor was entitled to retain his seat so long as he behaved himself and kept within the regulations laid down by the management. Per Buckley, L. J.: "A licence, coupled with an agreement not to revoke it for good consideration, conferred an enforceable right, and the grant of a right to enter upon premises and see a spectacle included a contract not to revoke till the performance was ended."

In Lowe *v.* Adams (1901, 2 Ch. 598), Cozens-Hardy, J., doubted whether Wood *v.* Leadbitter was still good law.

Where a passenger was forcibly removed from a railway carriage for a failure to produce his ticket which he had lost it was held that the contract between him and the company did not authorise the company to remove him from the carriage, and that an action for assault was maintainable. Per Lindley, L. J.: "It seems to me to be a totally different thing from a contract for an interest in land; and it seems to me absurd to treat the case as one

of a revocable licence. The doctrine of Wood *v.* Leadbitter does not appear to me to be at all applicable to the case of such a contract" (Butler *v.* Manchester &c. Railway, 1888, 21 Q. B. D. 207).

In Kerrison *v.* Smith (1897, 2 Q. B. 445), it was held, though permission to post bills was a licence, and therefore, not being by deed, was revocable, an action was maintainable for breach of contract.

3. If no undue violence is proved the stewards of a meeting are not liable in damages for assault, but if admission money has been paid the proper action would be for breach of contract.

A licence not being by deed was revocable, but an action was maintainable for breach of contract (Kerrison *v.* Smith, 1897, 2 Q. B. 445). "It is hardly necessary to say . . . . that it does not follow from the fact that an agreement of the kind which was here entered into does not create an interest in land, but only a licence . . . . that such an agreement does not create contractual rights in respect of which an action will lie in the event of contravention of them" (Romer, L. J., in Warr & Co. *v.* London County Council, 1904, 1 K. B., p. 723).

4. Persons who disturb or interrupt a meeting can only be arrested by the police if their conduct is such as to amount to a breach of the peace.

"Proof of annoyance and disturbance, such as crying 'Hear, hear,' and putting questions to the speaker, and making observations on his statements, would not be a sufficient justification of the defendant's conduct [*i.e.* giving such person in charge to the police]; but, in order to find a verdict for the defendant, they must be satisfied that what was done by the plaintiff amounted to a breach of the peace" (Bosanquet, J., in Wooding *v.* Oxley, 9 C. & P., p. 5).

5. Where meetings are not held in private places, *e.g.* highways, commons, and places where the public have ordinary access, the police have larger powers of dealing with disorder and obstruction than in meetings held in

private places. Such places being dedicated to public use for passing and going along them, must not be used in such way as to interfere with the ordinary person's right to use them in the way permitted him by law. The test generally is, Does such meeting prevent the right of free passage, *i.e.* does it cause an obstruction?

If a meeting causes an obstruction, it may be dispersed by the police, or if it is a meeting of persons who either intend to commit, or who lead others to entertain a reasonable fear that the meeting will commit, a breach of the peace it constitutes an unlawful assembly and the police may likewise interfere.

6. *Prohibition of holding of meetings where grave disorder is apprehended.*—A new regulation 9A under the Defence of the Realm Act dealing with public meetings has been made by an Order in Council. It provides:—

Where there is reason to apprehend that the holding of a meeting in a public place will give rise to grave disorder, and, will thereby cause undue demands to be made upon the police or military forces, it shall be lawful for a Secretary of State, or for any mayor, magistrate, or chief officer of police—who is duly authorised for the purpose by a Secretary of State—or for two or more of such persons so authorised, to make an order prohibiting the holding of the meeting, and if a meeting is held, or attempted to be held, in contravention of any such prohibition, it shall be lawful to take such steps as may be necessary to disperse the meeting or prevent the holding thereof. In the application of this regulation to Scotland, references to the Secretary for Scotland and a provost shall be substituted respectively for references to a Secretary of State and a mayor. In the application of this regulation to Ireland, references to the Lord-Lieutenant shall be substituted for references to a Secretary of State.

CHAPTER XI.

ADMISSION OF THE PRESS.

ONE of the first matters that require settlement by the conveners of a meeting, or members of a statutory or other body, is whether the Press should be invited to attend thereat. To a great extent it largely depends upon the character and objects of the proposed meeting. If the real object of the meeting is not so much the transaction of business, but the inception or furtherance of some cause—*e.g.* religious, social, or political—where the widest publicity is sought, there can be no doubt that the presence of the Press is a valuable adjunct to the meeting; in fact, the report of the meeting often promotes the object of the meeting more than the meeting itself. Again, where public money or the public welfare is concerned, it is essential that the public should be represented by the Press. The Press is generally excluded at committee meetings, where the real work of the body is generally done. The Local Authorities (Admission of Press to Meetings) Act, 1908, provides that certain committees of local authorities (*e.g.* education), shall admit the Press to its meeting (see *post*, p. 156); further, it is much better for information to be obtained through the usual channels at public meetings than for garbled reports or *ex parte* statements to be communicated to the newspapers by irresponsible members; in fact, unless there is unanimity of opinion in regard to their admission, it is preferable to admit the representatives of the Press, otherwise there is almost inevitably a "leakage" of information of an imperfect character.

On the other hand, it is often desirable to exclude the Press, when business rather than propaganda work is the object of the meeting, especially when the deliberations of that meeting are reported to a parent body or society to whose meetings the Press is invited. The presence of the Press often retards the progress and business of the meeting, since members are apt to indulge in talk rather than engage in business, more particularly

when elections are imminent, and there is on such occasions a natural tendency to play to the gallery *viâ* the newspapers. Moreover, there are times when matters of a confidential or delicate nature or of plans that are immature or undeveloped are being considered which should always in the first instance be discussed *in camerâ*, and the presence of the Press would naturally prevent free and open discussion.

Having decided to admit the Press, due and proper notice should be sent to the editors of the newspapers concerned, and it facilitates the performance of the arduous duties of the members of the Press if the agendas are sent to them at the same time as to the members, together with copies of the reports of the various committees which will be under consideration at the meeting. Proper accommodation should be provided, so that the Press can conveniently see and hear the speakers. If it is a public meeting, the secretary or other official should see that the Press is provided with a correct list of the names of the speakers and prominent people present, and that they are supplied with all reasonable information concerning the proceedings.

In The Mayor &c. of Tenby *v.* Mason (C. A., 1908, 1 Ch. 457) the defendant, a burgess and ratepayer of a town to which The Municipal Corporations Act, 1882, applied, asserted his right to be present at meetings of the council of the borough (other than committee meetings) in his capacity of (1) ratepayer of the borough; (2) reporter of a newspaper owned by him and published in that town; and, in the alternative, as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of the council (which the defendant was not) from their meetings; and for an injunction restraining the defendant from trespassing and being present at meetings of the council.

Held—That a meeting of the council of a municipal corporation was not a public meeting in the sense that any member of the public had a right to attend. That there was no ground for implying against a municipal corporation a right which was not expressed in any statute nor supported by any authority; and that the defendant

had therefore no such right as was asserted by him either as a burgess or as a member of the public; nor had he the right to attend as a newspaper reporter without the express or implied permission by the council.

This decision has been greatly modified by The Local Authorities' (Admission of the Press to Meetings) Act, 1908, which provides that representatives of the Press shall be admitted to the meetings of every local authority, but such representatives may be excluded in special circumstances when the majority of the members by express resolution consider such exclusion is advisable in the public interest (see *post*, p. 156).

Newspaper Reports.

By Section 4 of The Law of Libel Amendment Act, 1888, it is enacted that a fair and accurate report published in any newspaper of the proceedings of a public meeting or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a local authority, or any notice or report published at the request of any Government officer or department shall be privileged, unless it shall be proved that such report was published maliciously. But this protection is of no avail if the defendant has refused to insert in the newspaper complained of, a reasonable letter of explanation or contradiction by, or on behalf of, the plaintiff, nor is it available to protect fair and accurate reports of statements made to the editors of newspapers by private persons as to the conduct of a public officer (Davis *v.* Shepstone, 1886, 11 App. Cas. 187).

A public meeting is defined as any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. The matter reported must be of public concern and its publication for the public benefit.

PART II.

THE CONDUCT OF AND PROCEDURE AT COMPANY MEETINGS.

CHAPTER XII.

THE CONTROL AND GOVERNMENT OF LIMITED COMPANIES.*

The Powers of Majorities and Rights of Minorities.

THE general control and government of a limited company is with certain limitations, which are discussed later, dependent upon the four following principles:—

I. As expressed by a majority of its members in general meeting; *but*

II. Articles usually provide that the directors shall act for the company, in which case the powers of the members in general meeting are very limited. The ordinary business of the company is therefore transacted by the directors; the company exercises its control and does such acts as are reserved to it by the articles and by the votes of a majority at general meetings.

III. When the directors to whom are delegated the powers of the company are unable to act, then the powers of the directors revert to the company in general meeting; Barron *v.* Potter (*post*).

IV. A single shareholder may bring an action on behalf of himself and all other shareholders to restrain the company from doing an illegal or *ultra vires* act, or in cases when the majority acting in bad faith or oppressively are doing a wrong to a minority of shareholders. But if an act is only irregular on the part of the directors and is such that the company could ratify, or if the company has done irregularly what it might have done regularly, a minority cannot obtain the interference of the Court.

* See the Author's *Changes in the Law during the War* (Gee & Co.), Chapter xviii.

1. The Will of a Corporation: How Expressed.

The will of a corporation is expressed by the voice of its members, or a majority of them, at a properly convened meeting. Where no special provision is made by the constitution of a corporation, the whole are bound by the acts, not only of the major part, but by the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole or not (2 Bac. Abr. 269). Unless some delegation of powers is made, *e.g.* to directors, no corporate act can be performed in any other manner (R. *v.* Varlo Cowp, 248).

2 Recognition of Majority as Equivalent to the Whole: How Established.

The recognition of the majority as equivalent to the whole, although so readily allowed to-day, is not an early principle. Italy and the Church helped to establish the authority of the *major pars*. It was conceded that the will of the *universitas* could be expressed by the *major pars* of members properly present at a duly convened meeting, if the *major pars* were also the *sanior pars*. Henceforward the shout of the *major et sanior pars* was allowed to drown the shout of the minority. When a minority began at length to be considered as bound by the vote of the majority the *communitas* of the whole body began to show a truer co-operateness.

3. Principle of the Supremacy of the Majority.

The cardinal doctrine that the votes of a majority will bind the whole corporation, *i.e.* the principle of the supremacy of the majority, is clearly enunciated by Sir R. Baggallay in N.W. Transporation Co. *v.* Beatty (1887, 12 A.C. 589, at p. 593): "Unless some provision to the contrary is to be found in the charter or other instrument by which the company is incorporated, the resolution of a majority of the shareholders duly convened, upon any question with which the company is legally competent to deal, is binding on the minority and consequently upon

the company and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject matter opposed to or different from the general or particular interests of the company."

4. The Supremacy of the Majority as Applicable to Limited Companies.

This cardinal rule of corporation law, that a majority of its members *primâ facie* is entitled to exercise the powers of the corporation, is generally applicable to a company governed by The Companies Acts, 1908 to 1917, with certain limitations and qualifications. A very common limitation is the requirement of a majority of three fourths of those present in person or by proxy, *e.g.* Section 69, which has reference to extraordinary and special resolutions, and Section 120, which deals with the power of a company to compromise with members and creditors. As a rule, important changes in the constitution or regulations of a company require a special resolution, *e.g.* alteration of memorandum or articles, so that, with the exception of ordinary business of a company, a bare majority is insufficient. The memorandum and articles commonly give the directors certain exclusive powers, *e.g.* the management of the business and the control of the company; and unless there is express provision to the contrary, a majority of the shareholders present at an ordinary general meeting cannot exercise any direct control over the directors while they act within their powers (Quin & Axtens *v.* Salmon, 1910, A. C. 442). The directors of a company are not entitled to use their power of issuing shares merely for the purpose of retaining control over the affairs of the company or defending the wishes of the existing majority of the shareholders (Piercy *v.* Mills, 1919, 35 T. L. R. 703). The company may, however, either alter the articles or, if possible, remove the directors and thus ultimately attain its aims. Hence the majority, usually a three fourths majority, is supreme, and the Court with some exceptions, will respect

any decision it has arrived at and will, on occasion, assist it to enforce its decisions on a recalcitrant minority (Exeter & Crediton Railway Co. *v.* Buller, 1847, 5 Rail. Ca. 211). The majority has a complete discretion in all matters of internal administration, may carry on the affairs of the company as it thinks best, and decide whether its powers shall be delegated, and, if so, to what extent, provided the company does not exceed its powers and conforms to all the regulations governing them.

5. Rule in Foss *v.* Harbottle.

This rule, which governs companies as far as their domestic affairs are concerned, is that the Court will not generally interfere with the internal affairs of a company where an irregularity has been committed, so long as that irregularity is capable of confirmation by the company. The principle of majority supremacy is laid down in the leading case of Foss *v.* Harbottle (2 Hare, 461), which held that when an act which is not *ultra vires*, the confirmation of which might be done with the approval of a majority is done irregularly without such approval, the majority are the only persons who can complain or condone. Mellish, L. J., in MacDougall *v.* Gardiner (1875, 1 Ch. D., at p. 25) said: "In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, then there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes."

It is, said Lord Davey in Burland *v.* Earle (1902, A.C., at p. 93), "an elementary principle of the law relating to joint-stock companies that the Court will not interfere with the internal management of companies acting within their powers, and, in fact, has no jurisdiction to do so." In Browne *v.* La Trinidad (37 Ch.D., at p. 17)

Lindley, L. J., said: "I think it is most important that the Court should hold fast to the rule (*i.e.* Foss *v.* Harbottle) upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules when the irregularity complained of can be set right at any moment." The Court in The Southern Counties Deposit Bank *v.* Rider & Kirkwood (1895, 73 L. T. 374), declined to interfere because a notice convening a meeting was passed at a meeting of the board of directors, at which a quorum was not present, but in *re* John T. Clark (48 Sc. L. R. 154, Court of Session) the Court refused to sanction an irregularity even though such irregularity would result in no harm. This latter case had reference to whether or not a three fourths majority had been obtained in respect of an extraordinary resolution, and as this is governed by statute this case is easily distinguished from others which follow the rule in Foss *v.* Harbottle.

Nothing connected with internal disputes between the shareholders will the Court interfere with, unless there be something illegal or oppressive or fraudulent, or unless there be something *ultra vires* on the part of the company *quâ* company or on the part of the majority of the company so that they are not fit persons to determine the matter. All other matters must be left to the domestic tribunal constituted by the articles.

The Court will not interfere against the decision of the members of a club professing to act under their rules unless it can be shown either that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or that there has been *mala fides* or malice in arriving at the decision (Dawkins *v.* Antrobus, 1879, 17 Ch. D. 615).

6. Qualifications to the Principle of the Supremacy of the Majority.

Articles are a contract between the members of a company *inter se* and where a company has delegated its powers and duties to directors and there is a deadlock

which prevents the directors fulfilling their duties, the company can then act (Barron *v.* Potter, 1914, 1 Ch. 895), which was followed in Foster *v.* Foster, 1916, 1 Ch. 532, where the directors being in the circumstances unable to exercise the powers conferred upon them by the articles, the company in general meeting were held to have power to act.

The cardinal doctrine of the supremacy of the majority is subject to certain qualifications, apart from the principle laid down in Automatic Self Cleaning Filter Syndicate *v.* Cunninghame (1906, 2 Ch. 34), which held that the resolution of a numerical majority cannot impose its will upon the directors when the articles have confided to them the control of the company's affairs.

(1) *Control by Directors.*—In general, however, the control of the management by a company in general meeting is strictly limited. Articles commonly provide that the business of a company is to be managed by directors who may exercise all the powers of the company, subject to such regulations, not being inconsistent with the provisions of the articles, as may be prescribed by the company in general meeting (see *post*, p. 84).

(2) A majority cannot sanction any act which is *ultra vires* the company or is illegal, and it cannot be validated even by the unanimous vote of the whole company (Browne *v.* Monmouthshire Railway Co., 1851, 13 Beav. 32; Ashbury Railway Carriage Co. *v.* Riche, 1875, L.R. 7 H.L., 653).

(3) A majority is not entitled to practise a fraud upon the minority. Menier *v.* Hooper's Telegraph Works, (L.R. 9 Ch. 350), in which the defendants, who held a majority of the shares in the company, made an arrangement by which the assets of the company were, in effect, divided between them to the exclusion of the minority. In such a case, the minority had the right to have their share of the benefits ascertained for them in the best way in which the Court could do it and given to them. An act, however, may sometimes be fraudulent

in its inception and yet be capable of ratification; and if the majority in such a case are not implicated in any way in the fraud, and choose to sanction it, the Court will not interfere provided such act was not *ultra vires* (Clinch *v.* Financial Corporation, 1868, L. R. 5 Eq. at p. 482).

(4) The Court will interfere where there is no actual fraud but where the wrongdoers constitute or control the majority (Alexander *v.* The Automatic Telephone Co., 1900, 2 Ch. 56).

(5) A minority can prevent a company from acting on a special resolution obtained by a trick (Baillie *v.* Oriental Telephone & Electric Co., 1915, 1 Ch. 503).

(6) *Alteration of Articles.*—The power conferred on companies to alter articles must, like all other powers, be subject to those general principles of law and equity which are applicable to all powers conferred on majorities enabling them to bind minorities.

It must be exercised not only in the manner required by law but also *bonâ fide* for the benefit of the company as a whole and it must not be exceeded (Allen *v.* Gold Reefs of West Africa, 1900, 1 Ch. 656). This principle was followed in Brown *v.* British Abrasive Wheel, 1919, W. N. 74, where it was held *ultra vires* for a company to alter the articles enabling a majority of the company to expropriate the minority on paying proper compensation. "It is difficult to see how it could be just and equitable that a majority, on failing to purchase the shares by agreement, should take power to do so compulsorily" *per* Astbury, J.

Section 13 of the Act of 1908, in which a company has power to alter its articles, must be subject therefore to the limitation that this section cannot be used to oppress or defraud a minority of shareholders or so as to violate any principle of law or statute. In *re* Peveril Gold Mines (1898, 1 Ch. 122).

In Sidebottom *v.* Kershaw (1919, 36 T. L. R. 45), it was held that a company's articles may be altered so as to provide that shareholders who carry on business in

competition with the company may be required to transfer their shares to a nominee of the directors at the price certified by the auditors to be their fair value, but the alteration must be made *bonâ fide* with the intention of benefiting the company as a whole. Sterndale, M. R., distinguished this case from Brown *v.* British Abrasive Wheel (*supra*). Here "Mr. Justice Astbury came to the conclusion that the majority of the shareholders were acting not for the benefit of the company as a whole but for their own benefit." In Sidebottom *v.* Kershaw (*supra*) the alteration in the articles was done *bonâ fide* in the interest of the company.

In Dafen Tinplate Co. *v.* Llanelly Steel Co. (1920, 36 T. L. R. 428) it was held that a special resolution to alter articles to require any shareholder, other than a specified person, to transfer his shares at such a price as the board may determine, was a power given to a majority of shareholders which was not for the benefit of the company as a whole, and was therefore invalid.

Three Scotch cases illustrate the limitations of alteration of articles. In McArthur *v.* Gulf Line, (1909, S. C. 732) a transferee presented a transfer for registration and under the existing articles would have been entitled to have it registered. An alteration in the articles was made for the express purpose of defeating this right to registration of the transfer. It was held that the transferee's right could not be thus defeated and he was entitled to be placed on the register notwithstanding the alteration in the articles. In Gill *v.* Arizona Copper Co. (1900, 2 F. 843) it was held that the contract rights of shareholders cannot be extinguished by the company or by a majority of the class of shareholders to which they belong. In petition, Aberdeen Steam Navigation Co. (1919, 1 S. L. T. 249), an application for confirmation of a special resolution altering the articles of the company to the effect of giving it *inter alia* power to sell apparently the whole undertaking was refused, on the ground that the powers of alteration of the Companies Acts are limited, in that it appears to be assumed in the

statute that the company is not to lose its identity, *i.e.* the proposed alteration must be for its advantage as a going and continuing concern.

(7) An ordinary resolution inconsistent with the articles is not effectual (Quin & Axtens *v.* Salmon, 1909, 4 App. C. A. 442).

An act done in direct contravention of the articles may, however, be confirmed without a special resolution, provided it is *intra vires* the company. "There was a broad distinction between altering the articles in the future and ratifying something which had been done contrary to the articles. The shareholders could ratify anything which it was within the powers of the company to do." (Lindley, L. J., Grant *v.* United Switchboard Rail Co., 30 C. D. 135).

(8) Majorities must not be tyrannical. At a meeting of shareholders it is not competent for a majority to come determined to vote in a particular way on any question and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the chairman *with the sanction of a vote at the meeting*, to declare the discussion closed and to put the question to the vote. For a majority of shareholders to say "we do not care what one shareholder may say, we, being the majority, will do what we please" is what the Court will not allow. (Const *v.* Harris, 1824, T. & R. 496).

(9) *No inherent power to pass a rule expelling a member from a company; express provision for alteration of articles or rules must be made.*—"There is no more inherent power in the members of a club to alter their rules so as to expel one of the members, against the wishes of the minority, than there is in the members of any society or partnership which is founded upon a contract, that written contract of course expressing the terms on which the members associate together." Jessel, M. R. in Dawkins *v.* Antrobus, (1881, 17 Ch. D. 615 at p. 620).

(10) Power of debenture holders to vary rights is commonly given to a three fourths majority and although the minority will be bound by the decision of the majority, care must be taken that the provisions of the trust deed or the debentures are strictly complied with. A majority must not give away the rights of the whole body, (Mercantile Investment Co. *v.* International Co., 1893, 1 Ch. 484).

Powers given to majorities to bind minorities are always liable to abuse, and whilst full effect ought to be given to them in cases clearly falling within them, ambiguities of language ought not to be taken advantage of to strengthen them, and make them applicable to cases not included in those which they, apparently, were intended to meet.

Subject to the above limitations the majority is supreme, and the Court will not only respect any decisions come to by them, but will, if necessary, lend its aid to enforce their decisions on a recalcitrant minority.

7. Powers of a Company to Compromise with Creditors and Members under Section 120 of the Act of 1908

is governed by the following considerations:—

(1) The sanction of three fourths in value of the creditors present in person or by proxy is sufficient, although it may not be three fourths of the total amount of debts (Bessemer Steel Co., 1876, 1 Ch. D. 251). The majority must be of those present, not of those present and voting. Thus those who do not vote at all, in fact, increase the number of those who vote against the resolution.

(2) The Court will not sanction a scheme if it appears that the majority have not voted *bonâ fide* in favour of the creditors as a whole (Wedgwood Coal Co., 1877, 6 Ch. D. 627), or if in all the circumstances it does not approve of the scheme (*ex parte* Strawbridge, 1884, 25 Ch. D. 266). But creditors, who are also shareholders,

are nevertheless entitled to vote as creditors and in the same class with creditors who are not shareholders (Madras Irrigation Co., 1881, W. N. 172).

(3) The Court does not sit merely to say that the majority are acting *bonâ fide* and thereupon to register the decision of the meeting (English, Scottish, &c., Bank, 1893, 3 Ch. 385), but at the same time the Court will be slow to differ from the meeting, unless either the creditors have not been properly consulted, or the meeting has not considered the matter with a view of the interests of the class which it is empowered to bind, or some blot is found in the scheme (London Chartered Bank of Australia, 1893, 3 Ch. 540).

(4) In short, the functions of the Court are to see that the class is fairly represented at the meeting; that the statutory majority are acting *bonâ fide* and are not coercing the minority in order to promote interests adverse to the class whom they purport to represent; and that the arrangement is one which a business man would reasonably approve.

CHAPTER XIII.

MEETINGS OF DIRECTORS.

A COMPANY registered under The Companies Act, 1862, need not have directors (*re* Bulawayo Market Offices Co., 1907, 2 Ch. 458), and this would likewise apply to companies under the Companies Acts of 1908 to 1917. Section 72 seems to contemplate that there might be cases in which there are no directors, because it refers to directors or managers. Usually, however, directors are appointed to manage the affairs of the company.

Unless the articles provide to the contrary, directors act at duly constituted meetings called board meetings. The procedure is less formal than that of general meetings, and is in most respects similar to that of committee meetings, and many rules of the latter apply to board meetings (see *post*, p. 82).

Table A.—It should be clearly understood when reference is made to Table A that its provisions *only* apply to companies which have not elected to furnish themselves with other regulations and duly registered them, or have not expressly excluded them, and have not made all necessary provisions in their own articles. Section 11 of the Act of 1908 provides ". . . if articles are not registered, or if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A . . . . those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles;" Crew's *Company Law* (Butterworth), 2nd Edition.

Articles are, of course, subject to the provisions of Sections 64 to 71 of The Companies (Consolidation) Act, 1908* (now the Companies Acts of 1908 to 1917).

* Hereinafter referred to as the Act of 1908.

1. DIRECTORS MUST ACT AS A BOARD, NOT AS INDIVIDUALS, unless the articles give special powers to certain members of the board of directors. It follows, then, that the directors cannot act as a board without holding a meeting.

A director is not liable for misfeasance committed by co-directors without his knowledge at board meetings at which he is not present (Perry's Case, 1876, 34 L. T. R. 716).

Directors cannot think without meeting (per Fry, L. J., in the Portuguese Consolidated Copper Mines, 1889, 42 Ch. 167). "It was laid down by the Court of Exchequer in D'Arcy *v.* Tamar, Kit, Hill, and Callington Railway Company [L. R. 2 Ex. 158] that directors must act together as a board, and that it is not sufficient to procure the separate authority of a sufficient number of directors to constitute a quorum" (per Cozens-Hardy, J., in *re* Haycraft Gold Reduction and Mining Company, 1900, 2 Ch., at p. 235).

A board meeting can be held under informal circumstances, but the casual meeting of two directors, even at the office of the company, cannot be treated as a board meeting at the option of one against the will and intention of the other, and it makes no difference that a notice convening a board meeting has been sent by the one to the other if such notice has not in fact been received by the other (Barron *v.* Potter, 1914, 1 Ch. 895).

Thus directors cannot usually act without meeting as a board, unless the articles otherwise provide. An article which provides that a resolution in writing signed by the directors shall be as valid and effectual as if it had been passed at a meeting of the board, is not allowed by the Committee of the Stock Exchange when considering an application for a Stock Exchange quotation of a company.

Where the articles provided that no person, not recommended by the board of directors for election as a director, should be eligible unless at the time he had held twenty shares for two months and B was elected unanimously at a *general* meeting—six out of seven directors being present—it was held that B's election was void. "Six directors out of seven met in a different capacity and for a different purpose, and such a meeting does not make

them a board of directors" (per Jessel, M. R., in *re* East Norfolk Tramways Co., Barber's Case, 1877, 5 Ch. D., p. 967). Section 74 provides that the acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Retirement at ordinary meeting.—Where directors by the articles retire from office at an ordinary general meeting, failure to hold such a meeting will prevent their re-election, their retirement dating from the last day in the year on which a general meeting could have been held (*re* Consolidated Nickel Mines, 1914, 1 Ch. 883).

2. Casual Vacancies.

Where articles provide that the directors might fill up casual vacancies on the board, and a casual vacancy having occurred, and, before it was filled up, a general meeting of the company was held at which the vacancy was not filled up, it was held that the directors could still fill up the vacancy and *semble* the general meeting could have filled up the vacancy (Munster *v.* Cammell Company, 1882, 21 Ch. D. 183). Where articles provide that casual vacancies in the office of director might be filled up by the board, and that the directors might appoint additional directors up to the prescribed maximum, it was held in Blair Open Hearth Furnace Co. *v.* Reigart (1913, 108 L. T. 665), that the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the company, which had by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors. But where, owing to differences between the directors, no board meeting can be held for the purpose, the company retains power to appoint additional directors in general meeting (Barron *v.* Potter, 1914, 1 Ch. 895) This followed the principle of Isle of Wight Railway Co. *v.* Tahourdin (1883, 25 Ch. D. 320), a company governed by The Companies Clauses Acts, 1845–1889, when it was held that a general meeting of the company had power to elect directors where the directors did not think fit to exercise their powers.

Declaration as to election of directors.—The declaration of a chairman of the election of directors of a company is *primâ facie* evidence of the validity of such election (Wandsworth and Putney Gas Co. *v.* Wright, 1870, 22 L. T. 404).

3. Notice.

Reasonable notice must be given of the meeting unless the articles otherwise provide (Browne *v.* La Trinidad, 37 Ch. D. 1). If such notice be not given the proceedings are invalid unless all the directors are present (Harben *v.* Phillips, 23 Ch. D. 34). There is, however, no need to send notice when the directors have decided to hold meetings at regular intervals, *i.e.* when there is a fixed day and time: *e.g.* weekly meetings on Fridays, at 3 p.m. It is usual in such cases to send a bare notice merely stating on the agenda "General Business," unless the directors at a duly constituted board meeting have resolved that no such notice is to be sent. In the absence of regulations as to length of notice, a reasonable time between notice and meeting is necessary. Notice need not be given to a director who is abroad and out of reach, unless the articles expressly require this (Halifax Sugar Co., 1890, 62 L. T. 564). The notice need not state the kind of the business to be transacted in the absence of provision by the articles (La Compagnie de Mayville *v.* Whitley, 1896, 1 Ch. 788).

4. Agenda.

Directors are entitled to take their business at a board meeting in any order they may think proper (in *re* Cawley, 1889, 42 Ch. D. 209).

5. Quorum.

The articles usually prescribe the number for a quorum, failing which a majority of the directors must be present to constitute and act as a board (York Tramways *v.* Willows, 1882, 8 Q. B. D. 685), or the number who usually act will do (Lyster's Case, 1867, 4 Eq. 233).

A director cannot form part of and must not be counted in the quorum of a meeting which purports to deal with a matter in which he is not entitled to vote (Yuill *v.* Greymouth-Point Elizabeth Railway, 1904, 1 Ch. 32). If a quorum of a board is two, it does not necessarily follow that the physical presence of two persons constitutes a meeting; there must have been some previous notice or arrangement or some intention or agreement to meet as a board (Barron *v.* Potter, *ante*, p. 76).

Failure to keep quorum.—Where there is a quorum at the beginning of a meeting, but some of the directors leave the meeting, resulting in a number less than the quorum, it is probable that any subsequent acts would be invalid unless the articles provided for such a contingency.

Presence of quorum does not exclude other directors from attending.—"The presence of a quorum does not prevent lawfully constituted directors from attending, or allow a portion of the board to exclude the others" (per Chitty, J., in Harben *v.* Phillips, 23 Ch. D., at p. 26).

The board must be properly constituted.—Where the articles provide that the number of directors shall not be less than four and that three directors shall be a quorum, any business done by a quorum of a *board* of fewer than the minimum number of directors is invalid—that is to say, the board or total number of directors must not be fewer than the number specified, although to form a valid *quorum* they need not all meet (per Neville, J., in *re* Sly, Spink & Co., 1911, 2 Ch., p. 436).

Maximum and minimum number.—Articles usually fix what is to be the maximum and minimum number of the directors. Where a minimum is fixed, and the number of the directors falls below the minimum number, the remaining directors *primâ facie* cannot act (Alma Spinning Co., 1881, 16 C. D. 681) unless the articles contain the ordinary provision enabling the directors to act notwithstanding vacancies (Scottish Petroleum Co., 1883, 23 C. D. 431).

Nevertheless, their acts may be valid in favour of a person who has no notice of the irregularity (British Asbestos Co., 1903, 2 Ch. 439).

In *re* Copal Varnish Co., 1917, 2 Ch. 349, where a director of a board of two refused to attend meetings summoned to consider transfers of shares in order to prevent a quorum being formed, it was held that the transferees were entitled to an order directing the company to register the transfers, since a shareholder has a property in his shares which he has the right to dispose of subject only to any express restriction in the articles.

Resolutions invalid for want of a disinterested quorum.— Articles provided that directors could contract with the company, but not vote in connection with such contracts, and that they could determine the quorum. The quorum was three. Four directors were present, of which two, A and B, were interested in two separate contracts with the company. Two resolutions were passed, one affecting A and B. Neither voted in relation to the resolution affecting his own contract. Subsequently a resolution was passed that the quorum should be reduced to two to enable these contracts to be entered into. It was held that all these resolutions were invalid for the want of a disinterested quorum; that the issue of the debentures was one transaction and the splitting the resolutions did not make them valid, and that a resolution to reduce the quorum for the purpose of issuing a debenture to a director was invalid (in *re* North Eastern Insurance Co., 1919, 1 Ch. 198, following Yuill *v.* Greymouth-Point Elizabeth Railway, *ante*, p. 78).

6. Privilege in Speeches.

In Allan *v.* Clarke (*The Times*, 17th January, 1912, p. 16), per Scrutton, J.: "When a person spoke words about another which were defamatory of him the person defamed could bring an action in respect of the defamatory statement unless the person using the words could prove that they were true, but there might be a defence even although the words were not true. That was based upon public policy." "There were certain relations of life in

which the law regarded it as important that people should speak honestly without fear of legal action. Directors of a company had a duty to discuss the affairs of their company and might discuss the conduct of the company's officials so long as they did so honestly. That was a privileged occasion. If, however, a director did not use but abused the occasion by showing malice or spite, the privilege was gone. He held this was a privileged occasion and the plaintiff must fail unless he could show that the defendant spoke the words maliciously. . . . To succeed the plaintiff must shew that the defendant used the words not honestly but maliciously against the plaintiff, intending to pay off grudges against him."

7. Minutes of Proceedings of Directors.

Are not open to inspection by members, but should be accessible to directors, secretary, and also auditors would be entitled to see them for the purposes of audit. See p. 154.

Section 71 of the Act of 1908 provides:—

71. (1) Every company shall cause minutes of all proceedings of general meetings and (when there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

Minutes should be accurate, clear, and definite.—"Directors ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right" (Kekewich, J., in *re* Liverpool Household Stores, 59 L. J. Ch. 616).

The Companies Clauses Acts, 1845-1889, provides as follows (which, of course, do not govern limited companies under the Acts, 1908 to 1917):—

Proceedings to be entered in a book, and to be evidence.

Section 98. The directors shall cause notes, minutes, or copies, as the case may require, of all the appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of the meeting; and such entry, so signed, shall be received as evidence in all courts and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders, or directors, or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

Liability of directors in reference to minutes.—A director who is present at a meeting of the board at which the minutes of a previous board meeting are confirmed, even though he be a party to their confirmation, is not thereby made responsible for what was done at such previous board meeting (*re* Lands Allotment Co., 1894, 1 Ch., p. 616).

A director does not make himself responsible for an act done at a meeting at which he was not present, and which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes (Burton *v.* Bevan, 1908, 2 Ch. 240).

Confirm.—"That word sometimes means merely verify; it is commonly used in that sense at the meetings of public bodies who confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (Campbell, C. J., in The Queen *v.* Mayor of York, 1 E. & B., p. 594).

Votes of directors in matters in which they are personally interested.—Directors are usually forbidden to vote as directors on contracts in which they are interested, and when so forbidden they must not be reckoned in forming

a quorum (Yuill *v.* Greymouth-Point Elizabeth Railway, *supra*, p. 78). Such a prohibition will not, however, prevent a director from voting as a shareholder at general meetings of the company upon contracts in which he is interested (N.W. Transportation Co. *v.* Beatty, 1887, 12 App. Cas. 589), but an appropriation to themselves of property or valuable contracts sanctioned by their votes at a general meeting will not be valid (Cook *v.* Deeks, 1916, App. Cas. 554).

In *re* Express Engineering Works (1920, 36 T. L. R. 275) one of the articles provided that no director should, as a director, vote in respect of any contract in which he might be interested. All the shareholders were appointed directors, and at a board meeting they decided to enter into a contract in which they were interested but which was *intra vires* the company. It was held that as every member of the company had assented to the contract it was not invalid under the article following (Salomon *v.* Salomon, 1897, 13 T. L. R. 46), that a company is bound in a matter *intra vires* by the unanimous agreement of its members.

Even where the articles allow directors to enter into contracts with their companies, the Stock Exchange requires that they should not be allowed to vote upon matters in which they are interested.

Delegation to committee.—Where the power of allotting shares is vested by the deed of settlement of a company in the board of directors, the quorum of which is three, they have no right to delegate such power—*e.g.* to two directors (*re* Leeds Banking Co. (Howard's Case), 1 Ch. 561). The directors may, if the articles contain the necessary authority, delegate some of their powers to a committee, which is usually effected by resolution passed at a meeting of the board. The articles very generally provide for this.

8. The Committee System.

The work of a board of directors is generally subdivided amongst committees formed by members of the board—*i.e.* by selection out of a larger number, although sometimes a

committee may have power to add to its number. The chairman of the directors is usually a member of each committee, *ex officio*. The powers of such committees are entirely derived from the board of directors. The board is the ultimate authority, and committees may only exercise such subordinate powers as are given them by their appointing authority.

Generally a committee has no plenary power, its work being one of investigation, consideration, and recommendation; on the other hand, it may have been entrusted with full executive powers to act without reporting to the board. In all cases of appointment of a committee its powers and authority should be clearly stated, and its work definitely fixed. Usually a committee has subordinate powers of a limited character, its functions being confined to the administration of special departments of work—*e.g.* finance. Thus a committee may be empowered to determine and execute or to inquire and to report for the information of its executive authority.

Where a company is regulated by Table A directors may appoint a quorum of one under Clause 88 or delegate their powers to a committee of one under Clause 91. In *re* Fireproof Doors (1916, 2 Ch. 142).

The advantages of the committee system are many: *e.g.* it allows division of labour, adequate consideration of matters of detail, gives a director an opportunity of devoting himself to that particular branch of work in which he is either an expert, or familiar with, and thus utilises his services to the best interests of the company.

The disadvantages are few—*e.g.* where the committees have plenary power the control of the board is weakened, but this may be minimised where the chairman is *ex officio* member of each committee and makes a practice of attending committee meetings. Occasionally division of a board into committees leads to division of opinion, and engenders a want of harmonious working. Again, there must be a certain amount of delay which is unavoidable when the board has to confirm or agree to the recommendations of its committees. This may be prevented either by

holding the meetings of the committees on the same day as that of the board meeting, or a day or two previously.

The numbers constituting a committee must depend upon circumstances; if too large, it may be difficult to secure the attendance of *all* at every meeting, as will be necessary, unless the board, when appointing the committee, fix a quorum, in which case the attendance will necessarily vary and the permanent officials will predominate; if too small, it may lead to the autocratic rule of the chairman, although where desirable a committee may be appointed to consist of one person (*re* Taurine Co., 25 Ch. D. 118).

The Companies Clauses Acts, 1845 to 1889, Sections 95 and 96 (Crew's *Company Law*), make provision for delegation of the work of directors to committees as follows (which of course do not affect companies governed by the Acts of 1908 to 1917):—

Committee of directors. Powers of committee.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit within the prescribed limits, if any, and they may grant to such committees, respectively, power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

96. The said committee may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

9. Powers of Directors and Members inter se.

1. If the board act outside their own powers, but *intra vires* the company, the members may ratify and make such act valid. See p. 68.

2. If the act is *ultra vires* the company, the members cannot ratify or acquiesce in such act.

3. Members cannot override the decisions or acts of the directors if the board act *intra vires* the Acts and articles (Automatic Self-Cleansing Filter Syndicate *v.* Cuninghame, *ante*, p. 68).

4. The members cannot have control of the business or management of the company if such is vested in the directors by the articles, unless those articles are altered or unless there is a deadlock and the directors either cannot or will not act (Barron *v.* Potter, *ante*, p. 68).

5. Directors of a company are not entitled to use their power of issuing shares merely for the purpose of keeping control over the affairs of the company or defeating the wishes of the existing majority of shareholders (Piercy *v.* S. Mills & Co., 1919, 35 T. L. R. 703; see also Crew's *Changes in the Law during the War*, pp. 13 and 81).

Where the express power of appointing additional directors is vested in the board it excludes any implied concurrent power to the same effect in the company which has by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors (Blair Open Hearth Furnace Co. *v.* Reigart, 1913, 108 L. T. 665; see, however, Barron *v.* Potter, *ante*, p. 68).

CHAPTER XIV.

MEETINGS OF SHAREHOLDERS.

Kinds of Meetings; Notices.

There are three kinds of meetings of shareholders—

I. *Statutory Meeting*, the purport of which is to ensure that at an early date the shareholders may have an opportunity of ascertaining the precise position and prospects of the company. This is usually the first meeting of a company, but as the statutory meeting cannot be held earlier than one month from the date at which the company is entitled to commence business, an ordinary general meeting may, in certain cases, be the first meeting of the company.

By The Companies (Consolidation) Act, 1908,* Section 65. it is provided:—

65. (1) Every company limited by shares and registered on or after the first day of January, nineteen hundred and one, shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company, and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager; and shall state—

(*a*) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

* Afterwards referred to as the Act of 1908.

(*b*) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to the date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(*e*) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

1. Notices convening a meeting under this section must state that it is to be a statutory meeting (Gardner *v.* Iredale, 1912, 1 Ch. 700).

2. *Statutory meeting provides full scope for discussion and action.*—Sub-Section (8) (*ante*) provides free scope for discussion whether notice has been given or not, though no resolution may be passed without notice thereof. But notice of a proposed resolution can be given subsequently and passed at an adjourned meeting.

3. *The power of adjournment is entirely in the hands of the meeting.*—Sub-Section (8): "The *meeting* may adjourn from time to time," which puts the power of adjournment into the hands of the majority of the meeting, independently of the chairman, whether the articles give him the power to adjourn or not.

4. *Statutory meeting only applies to companies* limited by shares.*—This section does not apply to companies limited by guarantee or unlimited companies.

5. *Default in holding statutory meeting.*—There is no direct penalty for default in holding the statutory meeting. Failure to do so is, however, one of the circumstances in which the company may be wound up by the Court (Section 129 of the Act of 1908; see Crew's *Company Law*, 2nd Edition). In *re* Kent Outcrop Coal Co. (1912, W. N. 26) the first compulsory winding-up order was made for this default.

6. In the opinion of Somerset House the statutory meeting of a company is held to be a general meeting within Section 64, but not an ordinary general meeting within Section 26. Thus a company should hold two meetings in the first year of its existence, one being the statutory meeting and the other an ordinary general meeting, in order to comply with Section 26.

* Including private companies, though they need not file the statutory report. Section 65 (10), *supra*.

II. *Ordinary General Meetings.*—Section 64 of the Act of 1908 enacts that—

64. (1) A general meeting of every company shall be held once at the least in every calendar* year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Section 26 of the Act of 1908 requires once at least in every year a list of persons who on the fourteenth day after the first or only general meeting in the year are members of the company: *i.e.* an annual meeting cannot be held later in the year than 17th December. "It was no defence to the charge under Section 26, for the respondents to rely on the fact that there had been no general meeting held, the respondents themselves have been parties to the default in holding the general meeting" (per Lord Alverstone, C. J., in Park *v.* Lawton, 1911, 1 K. B., at p. 593).

The articles generally provide that there shall be an annual general meeting for the retirement and election of directors, auditors, &c., the consideration of accounts, the declaration of dividends, and the transaction of any special business, due notice of the nature of which may have been given.

The convening of ordinary general meetings is governed by the articles, and usually the directors are the proper authority for this purpose, and the secretary the officer appointed to be the instrument of that authority. As a rule they are convened by the directors passing a resolution at a duly constituted meeting of the board ordering that the necessary notices be issued.

*The calendar year commences 1st January (Gibson *v.* Barton, L. R., 10 Q. B. 329.) Failure to hold a meeting within the calendar year and not holding it within fifteen months from the preceding meeting are separate offences. The former offence is not committed until after 31st December, even though the period of fifteen months has already elapsed (Smedley *v.* Registrar of Companies, 1918, W. N. 350).

Failure by directors to hold an annual general meeting may be cured by—

(1) Table A, Clause 46, which provides that "in default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors."

(2) The Court may also on the application of any member call or direct the calling of a general meeting if default has been made (Section 64, Sub-section (2)).

III. *Extraordinary General Meetings.*—General meetings of the shareholders, other than ordinary meetings, are called "extraordinary general meetings." (Table A, Clause 47, *post*, p. 205.) They may be convened by—

(1) The directors, in accordance with the articles;

(2) The directors, on requisition of the members;

(3) The members, on failure of directors to convene.

The meetings convened on requisition of the members, or by members, are governed by Section 66 of the Act of 1908, which states:—

66. (1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

"For the purposes of Sub-Section (1), one is to take the amount of the issued share capital for the time being in respect of which all payments then due have been made, and that the requisitionists are to be the holders of not less than one tenth of that amount" (Warrington, J., in Fruit and Vegetable Growers' Association *v.* Kekewich, 1912, 2 Ch., at p. 58).

Notice of Meeting.

A company is not corporately assembled so as to transact any business unless the meeting is convened by a proper notice which gives every member the opportunity of being present, and complies with the articles as to stating the objects for which the meeting is held (Baillie *v.* Oriental Telephone Co., 1915, 1 Ch. 503).

Usually the articles provide as to the scope, service, and dispatch of notices of meetings.—When there is a deadlock and the board is unable to act, a meeting of the shareholders may be convened by this section (Barron *v.* Potter, *ante*, p. 68).

1. *Due notice must be given in accordance with the articles*, which generally require the notice to state hour, date, and place of meeting, all of which, although usually left by the articles to the discretion of the directors, must be reasonably convenient for the shareholders. A certain length of notice is usually provided for. In any case, the notice should clearly and explicitly state objects, time, date, and place of meeting so that no mistake or

confusion is likely to arise, fixing the time most convenient for those expected to be present or those who are usually in attendance.

Although the Court will not interfere with the powers and duties of directors in their management of the internal affairs of a company, directors will be restrained from fixing a particular date for holding the annual general meeting of the company for the purpose of preventing shareholders from exercising their voting powers (Cannon *v.* Trask, 1875, 20 Eq. 669).

Section 67 of the Act of 1908 enacts that—

> **67.** *In default of, and subject to, any regulations in the articles—*
>
> (i) A meeting of a company may be called by seven days' notice in writing served on every member in a manner in which notices are required to be served by Table A in the First Schedule to this Act [see p. 205].

In the absence of any special provision the number of days must be "clear"—*i.e.* exclusive of the day of service and the day on which the meeting is held.

Table A, Clause 49, however, provides that "seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) . . . . shall be given"—*i.e.* the day of meeting may be counted in reckoning the seven days' notice, but not the day of service.

If the articles provide that general meetings are to be convened by notice through the post, a notice by advertisement would be irregular, and *vice versâ*. Table A, Clause 110, provides that a notice is deemed to be served on the day on which the letter would be delivered in the ordinary course of post. Articles commonly provide that the notice is to be deemed to be served on the day following that on which the envelope containing it is posted.

An advertisement in the newspapers convening a meeting of debenture holders under a trust deed is a sufficient notice, unless the deed expressly requires notice to be given by circular.

Notice "at least fourteen days before the date" of a meeting of debenture holders means fourteen clear days between the issue of the advertisement or circular calling the meeting and the day of the meeting, and the notice so given is effectual, though it may not actually reach any debenture holder until seven days afterwards (Sneath *v.* Valley Gold, Limited, 1893, 1 Ch. 478).

Addresses for service.—The register of members, which must by Section 25 contain the addresses of members, is *primâ facie* evidence of matters therein stated (Section 33). and it is usually sufficient to take these addresses for service of notices.

2. *Notices must be issued by the person specified in the articles.*—Clause 48 of Table A states:—

The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists as provided by Section 66 of The Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

"'The directors may, *whenever they think fit.*' That means, I apprehend, that the directors may do it at a meeting properly convened. I do not think it means that any director may, without consulting the others, call an extraordinary general meeting" (Lindley, L. J., in Browne *v.* La Trinidad, 37 Ch. D., p. 17).

A notice issued by the secretary without the authority of a resolution of the directors duly assembled at a board meeting is invalid (*re* Haycraft Gold Reduction Co., 16 T. L. R. 350); but a notice issued without such authority may become a good notice if adopted and ratified by a board meeting held prior to the general meeting.

"The question is whether, although the notice was not authorised beforehand, it has been so ratified now as to make it a good and valid notice. In my opinion it has.

The principle of the cases, which I do not propose to go through, is that the ratification of an act purporting to be done by an agent on your behalf dates back to the performance of the act" (Cozens-Hardy, J., in Hooper *v.* Kerr, 83 L. T., p. 730).

The secretary should therefore see that the board meeting which has authorised or ratified the convening of a general meeting was itself properly convened and that a quorum of directors was present.

The resolutions of a general meeting convened by *de facto* directors are not invalidated by any irregularity in the constitution of the board (Boschoek Co. *v.* Fuke, 1906, 1 Ch. 48).

If the articles do not otherwise provide any five members of the company may call a meeting of the company (Section 67).

3. *Subject to any limitations in the articles, all shareholders on the register are entitled to receive notice, and if any person entitled to attend is not regularly summoned such meeting is irregular and its proceedings invalid* (Dobson *v.* Fussy, *ante*, p. 5).—Articles often prescribe that certain classes of members shall not be entitled to receive notice: *e.g.* those who hold shares of a special or preferential character; those who are in arrears with their calls; those whose holding in the company is less than a certain amount. Otherwise all shareholders on the register are entitled to receive notices, attend general meetings and vote thereat, and even when particular classes of shareholders are merely excluded from voting at certain general meetings they are probably entitled to receive notice, attend, and even speak at such meetings.

To guard against any possible miscarriage of a notice the following provision is generally inserted in the articles: "The accidental omission to give any such notice to any of the members shall not invalidate any resolution passed at any such meeting." Table A, Clause 49, provides that "the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting."

In the absence of any provision in the articles, the executors or administrators of a member when not themselves registered as members are not entitled to notice (Allen *v.* Gold Reefs of Australia, 1900, 1 Ch. 656), neither are preference shareholders with no right of voting (in *re* Mackenzie, 1916, 2 Ch. 450).

Table A, Clause 114, however, does require a notice to representative shareholders.

4. *Service by post.*—Section 26 of The Interpretation Act, 1889, provides that "where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Where, under a company's articles, notice of general meetings is to be given to "members," and such notice may be served upon any "member" either personally or by sending it prepaid by post addressed to "such member" at his registered address, it is not necessary, in the case of a deceased member, either to send a notice addressed to him at his registered address, or to serve his legal personal representatives unless they have themselves become "members" by formal registration (Allen *v.* Gold Reefs of West Africa, *ante*).

If the officers of a company have actual knowledge that one of two joint shareholders is dead, the company cannot rely upon a formal notice sent to the registered address of the deceased for the purpose of basing upon it a resolution forfeiting an unclaimed dividend (Ward *v.* Dublin North City Milling Co., 1919, 1 I. R. 5).

As to service of notices of general meetings on members resident abroad it was laid down by Malins, V.-C. (*re* Union Hill Silver Co., 1870, 22 L. T., p. 403): "It seems to

me that the Act has reference only to shareholders who can be reached by the ordinary English post, and that, in fact, it was not necessary to serve these absent shareholders."

This, of course, only applies where there are no provisions in the regulations on the subject, and any difficulty regarding proof of service of notice on members resident abroad is usually surmounted by a provision in the articles that the notice is deemed to be served on the day following that on which it is posted.

5. *Notice must state the real nature of the business to be transacted.*—A notice must give a sufficiently full and frank disclosure of facts upon which the meeting is asked to vote (Baillie *v.* Oriental Telephone Co., 1915, 1 Ch. 503). It should specify whether the meeting is ordinary or extraordinary, and should fairly and clearly disclose the nature of any special business. The articles usually provide what is general business, *i.e.* ordinary business, which therefore does not require detailed notice thereof, though it is desirable to set out such business *in extenso* on the agenda paper. Business other than general business is special business, and requires special notice thereof. A meeting has no power to pass any resolution outside the scope of the notice. It is material that the shareholder should know whether a special or extraordinary resolution is contemplated. See *post*, 133.

A notice of a general meeting, which by reason of its omission to refer to the matters of importance to the shareholders, did not sufficiently state the "general nature" of the business as required by the articles of association, was invalid, and the resolutions at such a meeting were not therefore duly passed (Normandy & Co. *v.* Ind, Coope & Co., 1908, 1 Ch. 84).

The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting: and the pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this

purpose. "The application of the doctrine of Foss *v.* Harbottle to joint stock companies involves as a necessary corollary the proposition that the vote of the majority at a general meeting, as it binds both dissentient and absent shareholders, must be a vote given with the utmost fairness—that not only must the matter be fairly put before the meeting, but the meeting itself must be conducted in the fairest possible manner" (per Kekewich, J., in Tiessen *v.* Henderson, 1899, 1 Ch., at p. 866).

Clause 50 of Table A states that—

All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

When it is proposed to pass a special or extraordinary resolution the notice should give the terms of the intended resolution. A resolution, other than a special resolution submitted for confirmation, need not, however, be passed in the exact terms of the notice.

"If, therefore, proper and sufficient notice of the intention to propose the resolution is given, nothing more is required, and the resolution is not invalidated if, owing to an amendment at the first meeting, the resolution passed is not identical with that of the notice" (Swinfen Eady, J., in Torbock *v.* Westbury (Lord), 1902, 2 Ch., p. 874).

Similarly, when it is intended to proceed under any particular section of the Act, that section should be clearly indicated in the notice. In fine, every shareholder is entitled to be informed of the express purpose of every meeting.

6. *Special business.*—Table A, Clause 49, provides that—

In case of special business [defined in Clause 50, quoted above], the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company.

An ordinary meeting may transact special business if the notice provides for it (Graham *v.* Van Diemen's Land Co., 26 L. J. Ex. 73) and there is nothing in the regulations confining special business to extraordinary meetings.

Unless the purport of the special business to be transacted is stated in the notice convening the meeting, the meeting is invalid (Lawes's Case, 1 De G. M. & G. 421; Kaye *v.* Croydon Tramways Co., 1898, 1 Ch. 358, C. A.).

It is not sufficient in a notice of an extraordinary meeting to state merely that "special" business will be transacted (Wills *v.* Murray, 4 Ex. 869).

7. *The Courts do not construe the notices with excessive strictness*; they must, however, substantially comply with the articles, and their meaning must be sufficiently clear to the average business man (see *post*, 82).

"In cases of this kind it is settled that the notice which specifies the business to be done, or the objects of the meeting, is to be a fair notice, intelligible to the minds of ordinary men—the class of men who are shareholders in the company, and to whom it is addressed. The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly" (Chitty, J., in Henderson *v.* Bank of Australasia, 45 Ch. D. 330).

The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting; and pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this purpose. A notice of two meetings to be held in immediate succession to consider *seriatim* two alternative resolutions (one at each meeting) is not rendered an invalid notice of the second meeting by an express provision that it will only be held in the event of the first resolution not being passed at the first meeting (Tiessen *v.* Henderson, 1899, 1 Ch. 861).

If there is no provision in the articles a notice calling two meetings may be issued, provided that in convening

the two meetings for passing and confirming a special resolution care is taken that the notice convenes both meetings unconditionally (*re* Espuela Land and Cattle Co., 48 W. N. 139), but conditional notices may be provided for by the articles.

8. *Notice must be definite, and not contingent unless the articles sanction such an one.*—"I hold as a matter of law that a conditional notice is not a sufficient notice" (Chitty, J., in Alexander *v.* Simpson, 1890, 43 Ch., p. 144). In *re* North of England Steamship Co. (1905, 2 Ch. 15) the following clause of the articles was held not *ultra vires* as being inconsistent with Section 51 of The Companies Act, 1862 (Section 69 of the Act of 1908), or on any other ground: "Whenever it is intended to pass a special resolution, the two meetings may be convened by one and the same notice, and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting."

A positive notice of the second meeting, even if followed by a statement that if the resolution is not passed at the first meeting notice will be given that the second meeting will not be held, is good (*re* Espuela Land and Cattle Co., 1900, 48 W. R. 684, and W. N. 139).

9. *Notice of a meeting adjourned to a fixed date is not usually necessary* unless the articles make special provision.

Table A, Clause 55, provides that—

When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

When a meeting is adjourned it is customary to fix the day and time for the adjourned meeting. When the adjournment does not exceed the time specified in the articles, notice is not necessary; but when adjourned *sine die* notice, of course, is always necessary.

At an adjourned meeting it is doubtful whether business other than that which was unfinished at the first meeting may be transacted even if due notice thereof is given, unless the articles make provision therefor.

And Table A, Clause 55, provides that—

> No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

But as regards the statutory meeting Section 65, Sub-section (8), provides that notice may be given of any resolution to be considered at the adjourned meeting and such resolution may be passed of which notice has been given in accordance with the articles.

An adjourned meeting is merely a continuation of the original meeting and if any notices have to be given before the *meeting* these must be given before the original meeting (see Catesby *v.* Burnett, p. 138). The proper course to adopt is to convene another meeting to follow the adjourned meeting, and to take the new business of which special notice has been given in the interval between the original meeting and the adjourned meeting.

10. *Notice need not be given of amendments to resolutions.*—"It is contended, however, that owing to the amendment, no notice has been given of the resolution actually passed, and that it is therefore invalid as a special resolution. . . . . This contention is not well founded. . . . It is not necessary that the resolution passed at the first meeting should be in the identical terms of the resolution specified in the notice" (Swinfen Eady, J., in Torbock *v.* Westbury (Lord), 1902, 2 Ch., p. 873). Although at a meeting confirming a special resolution it is true no further amendments can be passed.

No amendment can be moved which goes beyond the notice convening the meeting, or in the case of an ordinary meeting, beyond the scope of the ordinary business which, by the articles, may be transacted thereat without special notice.

11. *Notices must be read in reference to the memorandum and articles.*—Shareholders are presumed to know the Act of Parliament and also the terms of the memorandum and articles. Notices, therefore, must be read in reference to these documents (Campbell's Case, 1873, 9 Ch. 1).

Also see Table A, Clauses 110 to 114, *post*, p. 205 *et seq.*

12. *Invalid notice cannot be cured by acquiescence of shareholders.*—Where the notices convening a meeting did not disclose the contents of the agreement which formed the subject of the resolution it was held that such a resolution, although adopted by the requisite majority, was invalid and incapable of being made valid by acquiescence on the part of shareholders (Pacific Coast Coal Mines *v.* Arbuthnot, 1917, A. C. 608).

13. *Postponement of Meetings.*—A meeting, if duly called, cannot be postponed by a subsequent notice issued before the meeting (Smith *v.* Paringa Mines, 1906, 2 Ch. 193). It can, of course, be adjourned before any business is done.

14. *Shareholders may ratify an ultra vires act of the directors if intra vires the company.*—The directors of a company are not entitled, without the authority of a general meeting, to present a winding-up petition in the name of the company. Where directors have presented a winding-up petition in the name of the company without authority, it is open to a general meeting of shareholders to ratify their action (in *re* Galway Tramways Co., 1918, 1 I. R. 62).

CHAPTER XV.

MEETINGS OF SHAREHOLDERS.

Constitution of General Meetings.

TO constitute a general meeting it is essential—

(1) That the properly appointed person is in the chair—the chairman is necessarily an integral part of a meeting;

(2) That a quorum is present.

The Chairman.

1. *Appointment.*—The articles generally provide that the chairman of the board of directors shall be chairman of general meetings, or in his absence some other director. If no director is willing to act as chairman, the meeting itself can select some person from amongst the members present. Table A states:—

> 53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.
>
> 54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

But where there are no regulations on the subject in the articles, Section 67 of the Act of 1908 permits *any person* elected by the members present to act as chairman.

Section 68 provides that a company which is a member of another company may by resolution of the directors authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. In these circumstances a person not a shareholder may be present at a general meeting and may conceivably be elected chairman. But the words

"company" and "corporation" are not interchangeable, but had the meaning provided by Section 285, viz., a company formed and registered under this Act or an existing company, and in consequence the power given by Section 68 is not exercisable by a foreign corporation which held a large number of shares in an English company. Hence a representative of such foreign corporation is not qualified to attend a meeting of the company and in consequence was not duly elected chairman (Blair Open Hearth Furnace Co. *v.* Reigart, 1913, 108 L. T. 665).

Where directors appoint a chairman, there is no contract that he shall remain chairman until he ceases to be a director, and the directors have power at any time to substitute another chairman in his place (Foster *v.* Foster, 1916, 1 Ch. 532).

The Authority of the Chairman.

The authority which a chairman has, is delegated to him by the company through its articles, but apart from express provisions in the articles the chairman collects, as it were, his authority from the meeting. Where a number of persons assemble and put a man in the chair they devolve on him by agreement, the conduct of that body. They attorn to him, as it were, and give him the whole power of regulating themselves individually. In general a chairman often forgets when presiding over a general meeting of shareholders that he is acting as its representative and not that of the directors. As his authority, apart from the articles, must be collected from the meeting it follows that in case of division of opinion the majority is supreme, provided that such majority acts *bonâ fide* and is not endeavouring to coerce the minority. At a meeting of shareholders it is not competent for a majority to come determined to vote in a particular way on any question and to refuse to hear any arguments to the contrary. When the views of the minority have been heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote.

For a majority of shareholders to say "we do not care what one shareholder may say, we being the majority will do what we please" is what the Court will not allow (Const *v.* Harris, 1824, T. & R. 496) and what a chairman should prohibit.

2. *Duties.*—Unquestionably it is the duty of the chairman, and his function—

(*a*) To preserve order;

(*b*) To conduct the proceedings in a proper manner;

(*c*) To take care that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting.

(National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159.)

The real object of a meeting is not so much to discuss matters, as to come to a decision on any question which is properly before it.

"It is on him" [the chairman] "that it devolves both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to the being called upon to answer for his conduct if he has done anything improperly" (Denman, C. J., in R. *v.* D'Oyly, 12 A. & E., p. 159).

In the absence of express provisions in the regulations, "the details of the proceedings must be regulated by the persons present and by the chairman, and if his decision is quarrelled with it must be regulated by the majority of those present" (James, V. C., in Wandsworth Gas Light Co. *v.* Wright, 1870, 22 L. T., p. 405).

But where the articles expressly provide for the conduct of meetings, the provisions contained therein must be followed.

3. *Powers.*—The chairman must exercise his powers discreetly and impartially, as any improper use or want of good faith might put him in an invidious position. It is his duty to conduct the meeting in such a way that the business thereof may be facililated and the results clearly and

well defined. It is the bounden duty of a chairman to maintain his ruling on points of procedure. When he deliberately rules, *e.g.* that an amendment cannot be put "it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling," *per* Lopes, L. J., in Henderson *v.* Bank of Australasia (1890, 45 Ch. D. 330). But if the chairman's ruling be wrong he is, of course, subject to being called upon to answer for his conduct, and legal proceedings may follow which may result in declaring the proceedings invalid (Catesby *v.* Burnett, *post*, 138).

If the chairman wisely or unwisely takes responsibility, he must necessarily take the consequences. If he acts reasonably, impartially, *bonâ fide* and in the interests of the meeting, paying some regard to the rights of minorities he will usually avoid those risks which every fair-minded chairman avoid, particularly if he remembers that, apart from the articles, he collects his authority from the meeting.

(*a*) To regulate the speaking and decide points of order.

(1) In case of dispute he is entitled to determine who should address the meeting, and protect the speaker from interruption.

(2) All incidental questions—*e.g.* points of order—should be decided with the utmost impartiality and fairness, having due regard to the rights of minorities.

The chairman of a general meeting has *primâ facie* authority to decide all incidental questions which arise at such meeting and necessarily require decision at the time, and the entry by him in the minute book of the result of a poll, or of his decision of all such questions, although not conclusive, is *primâ facie* evidence of that result, or of the correctness of that decision, and the *onus* of displacing that evidence is thrown on those who impeach the entry (*re* Indian Zoedone Co., 26 Ch. D. 70).

(3) The business transacted *must fairly come within the scope of the notice given*, and it is the undoubted duty of the chairman to decide whether any proposed resolution falls within the scope of the notice. But he is bound to allow the proposal of all legitimate and germane resolutions and amendments, and a refusal to do so will invalidate the proceedings because such refusal may amount to the withdrawal of a material and relevant question from the meeting. "I think, then, that the chairman was entirely wrong in refusing to put the amendment, and that the resolutions which were passed cannot be allowed to stand, because the chairman, under a mistaken idea as to what the law was which ought to have regulated his conduct, prevented a material question from being brought before the meeting" (Cotton, L. J., in Henderson *v.* Bank of Australasia, 45 Ch. D., p. 346).

Resolutions and amendments thereto must come within the scope of the notice convening the meeting and conform to any provisions of the articles as to notice or other requirements. Much difficulty and danger to the chairman at times arise from amendments as to relevancy and to notice. If notice is required in respect of a resolution it is probable that notice of a relevant amendment thereto is not necessary in the absence of provisions in the articles. After any motion, including a substantive motion, has been accepted by the meeting, no amendment inconsistent with it should be submitted, as the acceptance of the prior proposal negatives the inconsistent amendment—assuming, of course, all relevant amendments have been properly disposed of before the original motion. Chairmen often refuse an

amendment because it is not seconded, but in the absence of specific provisions in the articles, this ruling is wrong (see Horbury Bridge Co., *post*, p. 136). When he rules an amendment out of order there is no obligation on the part of the mover of the amendment to contest that ruling or to leave the meeting. It is not necessary for the latter to keep up an altercation with the chairman, nor does he lose his right by acting under the ruling of the chairman (Henderson *v.* Bank of Australasia, *supra*). Where notice has been given of several resolutions, each resolution must, if any member so requires, be put separately and not *en bloc*; the poll thereon must in any event be taken separately (Blair Open Hearth Furnace Co. *v.* Reigart, 1913, 108 L. T. 665). If there is the slightest doubt as to whether an amendment is in order or not it should be allowed to be put; this will safeguard the ultimate resolution if it turns out in the end that the amendment is in fact relevant and germane to the resolution. The chairman has often to make up his mind at once upon the validity of amendments, and when he is fairly certain that the amendment will be lost there is no real harm done in allowing an amendment which he thinks, with some hesitation, is *ultra vires*. Chairmen too often reject amendments which have no chance of success, thereby endangering the ultimate resolution on the ground of some apparent small technical objection, which may have no substance in fact.

(*b*) *Chairman's declaration as to the result of voting*, in the absence of a poll on an extraordinary or special resolution, is conclusive, Section 69, Subsection (3), of the Act of 1908, and Table A,

Clause 56, extends this effect of the chairman's declaration to other resolutions. This will prevent any question being reopened in legal proceedings even if evidence is forthcoming that the chairman's declaration was wrong (Arnot *v.* United African Lands, 1901, 1 Ch. 518), unless there is an apparent error, *e.g.* where he states the number of votes given and they are insufficient (Central New Mines, 1902, 2 Ch. 498) or is plain on the face of the proceedings (John T. Clark & Co., *post*, 67).

Where articles provided that if votes were not disallowed at the meeting they should be good for all purposes, it was held in Wall *v.* London & Northern Assets Corporation (1898, 1 Ch. 550), that in the absence of bad faith or fraud the resolution could not be afterwards impeached on the ground that votes were improperly received and in Betts *v.* Macnaghten (1910, 1 Ch. 430) it was held that, notwithstanding a declaration by the chairman, the notice of the meeting may be looked at to see if the resolution is in order.

(*c*) *To close meeting for persistent disorder.*—If the chairman is unable to repress persistent disorder he should quit the chair and adjourn the meeting, but this course should only be adopted when the meeting is quite out of hand. Sometimes an adjournment for a short period—*e.g.* half an hour—is effective.

(*d*) *To apply the closure with consent of meeting.*—At a meeting of shareholders it is not competent for the majority to come determined to vote in a particular way on any question, and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion

closed, and to put the question to the vote (Wall *v.* London and Northern Assets Corporation, 1898, 2 Ch. 469).

(*e*) *To adjourn the meeting.*—Table A, Clause 55, states that the chairman "may" adjourn, and, where the articles contain this provision, the chairman has a discretion, and may decline to adjourn. An article of association provided that "the chairman may, with the consent of the members present at any meeting, adjourn the same." It was held upon the true construction thereof the chairman is not bound to adjourn a meeting, even though a majority of those present desire the adjournment (Salisbury Gold Mining Co. *v.* Hathorn, 1897, App. Ca. 268).

The chairman has no power to stop or adjourn a meeting capriciously. "But, in my opinion, the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure . . . . The meeting by itself can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chairman, forgetful of his duty, or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like" (National Dwellings Society *v.* Sykes, 1894, 3 Ch., p. 162).

In Catesby *v.* Burnett (1916, 2 Ch. 325) the chairman left the chair before the business of the meeting was completed, and the meeting, having elected another chairman and continued its proceedings, it was held that such business was validly transacted.

(*f*) *Casting vote.*—Table A, Clause 58:—

> 58. In the case of an equality of votes, whether on show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

The chairman has no casting vote at Common Law. To give him this power it must be provided for in the articles. "When, as the result of the chairman giving his vote, the numbers on either side become exactly equal, the Common Law appears to have provided no way out of the difficulty" (Nell *v.* Longbottom, 1894, 1 Q. B., p. 771).

If he has a casting vote, and the votes given will be equal if certain votes which are challenged are invalid, he may give his casting vote contingently, and if the votes challenged are subsequently disallowed, the casting vote so given will be valid (Bland *v.* Buchanan, 1901, 2 K. B. 75). If the chairman does not exercise his casting vote the motion, of course, is not carried.

Quorum.

Whenever a certain number are incorporated, a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act (Attorney-General *v.* Davy, 1745, 2 A. & K. 212), but if the articles prescribe a quorum, no less number of members can do business (Howbeach Coal Co. *v.* Teague, *infra*). The assent of every member of a company given separately has not the same effect as a resolution passed at a general meeting (*re* George Newman, 1895, 1 Ch. 674), but in Baroness Wenlock *v.* River Dee Co. (1883, 36 Ch. D., at p. 681) Cotton, L. J., in a case where the act was within the powers of a corporation, said "the Court would never allow it to be said, that there was an absence of resolution when all the shareholders and not only a majority have *expressly* assented to that which is being done."

Articles generally make provision as to the number of members which will constitute a quorum, *i.e.* those who are personally present at a meeting, and without regard to the fact that some may hold proxies for other members (Ernest *v.* Loma Gold Mines Co., 1897, 1 Ch. 1; see p. 151). Proxies are counted at a poll, if the articles so permit.

Table A, Clause 51, provides:—

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

1. *Effect of transacting business without a quorum.*—The prescribed quorum—whatever it may be—must be present *before* a meeting can proceed to business. Any resolution passed at a meeting where no quorum was present is invalid (The Howbeach Coal Co. *v.* Teague, 5 H. & N. 151; *re* The Cambrian Peat Co., 31 L. T. 773).

2. *One person cannot usually constitute a meeting.*—If there be no provision in the articles a quorum consists of two persons. At a meeting of a company only one shareholder attended, who held the proxies of the other shareholders. He took the chair and concluded the proceedings by proposing a vote of thanks to himself. There being no "meeting" it follows that all resolutions "passed" thereat were invalid and the vote of thanks out of order. "It is clear that, according to the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended" (Mellish, L. J., Sharp *v.* Dawes, 2 Q. B. D., p. 29).

A company by its memorandum required the sanction of preference shareholders by resolution at a separate meeting of such holders specially summoned before an increase of capital could be made. All preference shares were held by one person, who signed a document in the minute book recording his assent to the issue. *Held*—The word "meeting" in the memorandum must be taken to have been used not in its strict sense, but as applicable to the case of a single shareholder. "In an ordinary case I think it is quite clear that a meeting must consist of more than one person. That was determined in . . . . Sharp *v.* Dawes, [2 Q. B. D. 26] . . . . In giving judgment in the Court of Appeal, Lord Coleridge, C. J., said: 'The word "meeting," *primâ facie*, means a coming together of more than one person. It is, of course, possible

to show that the word "meeting" has a meaning different from the ordinary meaning. . . . . I think I may very fairly say that where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself or form a meeting with himself in the ordinary sense, the persons who framed this memorandum having such a position in contemplation must be taken to have used the word "meeting" not in the strict sense in which it is usually used, but as including the case of one single shareholder" (Warrington, J., in East *v.* Bennett Bros., Limited, 1911, 1 Ch., pp. 168–170; see also *ante*, p. 24).

The physical presence of a quorum does not necessarily constitute a meeting unless there was an intention to meet either by previous notice or arrangement (Barron *v.* Potter, *ante*, p. 68).

3. *Constitution of quorum.*—Unless the articles otherwise provide—

1. The quorum must consist of members entitled to vote.

2. Proxies cannot be counted in a quorum. Articles, however, often provide for a quorum "present in person or by proxy." Where one member only is in attendance and the articles provide for the quorum of a meeting a larger number "present in person or by proxy" it is doubtful whether proxies can be relied upon to constitute a "meeting" (Sharp *v.* Dawes, 2 Q. B. D. 29), unless it is a special "class" meeting (East *v.* Bennett Bros., Limited, *ante*), and he is the only member of that class, in which case there would, of course, be no proxies since he alone would constitute the class. At a meeting of the shareholders of a company, the articles of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each person who holds proxies as a single vote, and not count

a vote for each of the members whose proxies he holds (Ernest *v.* Loma Gold Mines Co., 1897, 1 Ch. 1).

3. Joint holders of shares in a private company are treated as a single member (Section 121, Sub-Section (3), of the Act of 1908; see Crew's *Company Law*, p. 7).

4. *Special class quorum.*—Sometimes there is a different quorum fixed for general meetings of shareholders and for meetings of special classes of shareholders (Hemans *v.* Hotchkiss Ordnance Co., 1899, 1 Ch. 115). "A company limited by shares may, by special resolution confirmed by an order of the Court, modify *the conditions contained in its memorandum* so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three fourths of the share capital of that class, and confirmed at a meeting of shareholders of that class, in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class" (Section 45 of the Act of 1908; see Crew's *Company Law*).

It should be remembered that this section only applies when the rights of the shareholders are defined by the memorandum. It is not now usual to define the rights of the shareholders in the memorandum, but only to state therein the division of the capital, leaving it to the articles to define whatever their rights are, and when this is adopted it apparently is sufficient where Table A is operative to comply with Clause 4, and in other cases with the particular articles of the company in question.

5. *Quorum when attendance of specified number impossible.*—When the attendance of the prescribed quorum is a physical impossibility, owing to there not being sufficient members

to comply with the requirement, the presence of all the members would probably constitute a quorum, provided there were at least two members present.

In *re* Sly, Spink & Co. (*ante*, p. 78), it was held that the provision that a quorum of a board of four may act does not make legitimate acts by a board consisting of less than four members. This raises a practical difficulty both in regard to board and general meetings; and in case of death or other disability causing the number of directors or members to fall below the minimum the articles should provide that the remaining directors may act solely for the purpose of filling up the vacancy or vacancies. If no such provision were made it would probably be competent for the remaining directors to act for this purpose only. At the same time such procedure would be somewhat irregular. The articles might be altered by special resolution to make this necessary provision, the meetings being convened by Section 66. Barron *v.* Potter (*ante*, p. 68) provides for this contingency, and is the better course to adopt.

6. *Meeting adjourned if quorum not assembled in time.*— The articles generally contain a clause similar to the following (Clause 52 of Table A):—

> If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

CHAPTER XVI.

MEETINGS OF SHAREHOLDERS.

The Agenda Paper.

AS a rule the business of the meeting should be transacted in the order in which it occurs in the agenda paper, but with the consent of the meeting this order may be varied. Of course, amendments, irrespective of their position on the agenda paper, should be taken during the discussion of the questions which they propose to amend.

Proceedings at General Meetings.

1. *Reading the notice convening the meeting.* — Meetings are usually commenced by the secretary reading the notice convening the meeting. There is, of course, no statutory requirement for reading the notice, although it is usual, more especially in meetings of companies. It has been suggested that its reading is to give the chairman an opportunity of composing himself for his subsequent speech. It seems somewhat superfluous to read a notice concerning which everyone present is usually perfectly familiar with, and without which knowledge he would not have attended the meeting. On the other hand, judicial notice has been taken of the fact that notices are usually read or taken as read. *Notice taken as read*—"It appears from the minutes that the notice convening the meeting was taken as read. The duty of the secretary being to record accurately what takes place at a meeting, he either sets out the notice in the minutes or makes an entry therein sufficient to identify any document which is read or taken as read at a meeting of this character. The mere fact that the shareholders dispense with the actual reading of the document (*i.e.* notice of meeting), the language of which is quite familiar to them, does not, in my opinion, do away with the necessity of treating that document as having formed part of what was

referred to and dealt with at the meeting" (per Eve, J., in Betts & Co., Limited *v.* Macnaghten, 1910, 1 Ch., at p. 434). It is apparently, however, an almost universal practice of company meetings, and in the opinion of a very experienced chairman such a reading of the notice provides a convenient opportunity to gauge the temper and feeling of the meeting. Sometimes the minutes of the previous meeting are then read and formally verified as correct, but, unless specially required by the regulations, this proceeding at a general meeting is perhaps somewhat unnecessary.

2. *Consideration of report and accounts of directors.*— Where these have been printed and circulated prior to the meeting they are often, by consent, taken as read. The auditors' report must, however, be actually read to the meeting (Section 113 of the Act of 1908).

113. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) Whether or not they have obtained all the information and explanations they have required; and

(*b*) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine—

(*a*) If the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

(*b*) The balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

The chairman usually proceeds to make some comments on the accounts, explains the position of the company, gives such further information concerning its affairs as he thinks may properly be made known, and concludes by moving that the report and accounts be adopted. This is usually seconded by another director with a few remarks, and then the meeting is free and open to comment upon or criticise the report, the accounts, and the chairman's speech.

In formally moving "That the report and accounts be adopted," it follows that amendments thereto may also be moved. Care should be taken that such amendments are strictly in order: *e.g.*—

(1) *That the report and accounts be adopted, save as regards certain matters specified therein*, or *subject to some instruction to the directors* would be in order, since it is within the power of the meeting to consider and entertain such an amendment. "Directors have great powers, and the Court refuses to interfere with their management of the company's affairs if they keep within their powers, and if a shareholder complains of the conduct of the

directors while they keep within their powers, the Court says to him, 'If you want to alter the management of the affairs of the company go to a general meeting, and if they agree with you they will pass a resolution obliging the directors to alter their course of proceeding.'" This, of course, is only applicable in the case of companies governed by The Companies Clauses Acts, 1845–1889 (Cotton, L. J., in Isle of Wight Railway Co. *v.* Tahourdin, 1884, 25 Ch. D., p. 330).

(2) *That the question be now put* (*i.e.* the closure). If carried in the negative it prevents the original resolution being put at all, for which purpose the meeting is expressly called. Such an amendment would be out of order, unless it were moved not to prevent the original resolution being considered, but to take the sense of the meeting as to the adoption or rejection of report and accounts, after a reasonable time for discussion had been allowed. A member has no right to continue to speak if a meeting desires him to stop, provided he has had a reasonable opportunity of speaking (Wall *v.* National and Northern Assets, 1898, 2 Ch. 469).

(3) Dilatory resolutions are distinctly out of order: *e.g.*—

(*a*) *That this meeting* (or *debate*) *be adjourned*, unless moved in order to facilitate business, *e.g.* to take a poll.

(*b*) *That this meeting do proceed to the next business.*

Both these resolutions prevent the consideration of the report and accounts with the view of either adopting or rejecting them.

(4) The two following amendments sometimes moved are also out of order, and should not be put to the meeting:—

(*a*) *That the report and accounts be received but not adopted—i.e.* a mere negative of the original resolution.

The same object could be obtained by voting against the resolution.

(*b*) *That a committee of inspection be appointed.*

This requires the sanction of a special resolution, since it cannot come under the category of ordinary business. "A company may, by special resolution, appoint inspectors to investigate its affairs" (Section 110 of the Act; see Crew's *Company Law*, 2nd Edition).

It is, however, very usual to move to appoint a committee of shareholders to consult with the directors on some matter mentioned in the report, and to report subsequently to another meeting of shareholders; but, as pointed out below, such committees have no special power to inspect the books or examine witnesses.

3. *Discussion of the reports and accounts: asking questions thereon.*—So far as it can be done without injury to the interests of the company, the directors should answer freely all inquiries as regards the accounts and the company's affairs. But they are not bound to answer in general meeting any questions that they consider to be undesirable in the best interests of the company to do so.

4. *Committees of inspection.*—Where there is considerable dissatisfaction with the state of the affairs of the company, the shareholders may decline to adopt the accounts, and may appoint a committee of shareholders to investigate and report to an adjourned meeting. But apparently even such a committee of inspection, *i.e.* not under Section 110, cannot be appointed without proper notice, for it is a matter of importance to shareholders, and all of them should have an opportunity of voting. When there is nothing to conceal, the directors usually offer no opposition to such a course, and give every facility for investigation. Unless the articles expressly provide, such a committee appointed by an ordinary general meeting without special notice has no power to inspect the books of the company, examine witnesses, or to make any changes in the management, unless the committee is appointed under Section 110.

5. *Should the directors oppose the appointment of a committee of inspection*, Section 110 of the Act of 1908 may be put into effect, which provides:—

110. (1) A company may by *special resolution* appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

But of course the company cannot take the control of its affairs out of the hands of its directors and give powers to a committee unless the articles so provide, and if there be no power to remove the directors the articles must be altered or the company must wait until the directors retire in due course. The latter is often the more practical method since alteration of articles requires a special resolution which, *inter alia*, requires a three fourths majority support, whereas the election of a director requires only a bare majority.

6. *Application to Board of Trade to appoint inspectors* under Section 109 (*infra*) may be made by the dissatisfied shareholders if the special resolution be not carried.

Investigation of Affairs of Company by Board of Trade Inspectors.

109. (1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

(i) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued;

(ii) In the case of any other company having a share capital, on the application of members holding not less than one tenth of the shares issued;

(iii) In the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious

motives in requiring, the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

Section 66 of the Act of 1908 provides that shareholders holding one tenth of the issued capital can at any time convene an extraordinary general meeting for this or any other purpose (see *ante*, p. 90).

Rights of minority of shareholders to investigation.—Since the Act of 1890, now incorporated in the Act of 1908, it is "not so clear that the majority could compel the minority of shareholders to forego the statutory right of investigation" (Vaughan Williams, J., in *re* General Phosphate Corporation, 1893, W. N. 142).

7. *Declaring a dividend.*—One of the directors usually then moves the payment of a dividend out of the available profits. After a dividend has been declared and becomes payable it is a specialty debt, and each shareholder is entitled to sue the company for his proportion for twenty years from the date of declaration (in *re* Artizan's Land and Mortgage Corporation, 1904, 1 Ch. 796). "The necessity for the declaration of a dividend as a condition precedent to an action to recover is stated in general terms in *Lindley*

on Companies [5th edition, p. 437], and, where the reserve fund article applies, it is obvious that such a declaration is essential, for the shareholder has no right to any payment until the corporate body has determined that the money can properly be paid away" (Farwell, J., Bond *v.* Barrow Hæmatite Steel Co., 1902, 1 Ch., p. 362). The articles usually provide that the directors, with the sanction of the meeting, may declare a dividend. Table A, Clause 95, provides: "The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors." There is generally a similar provision in the articles that shareholders may reduce but not increase the rate of dividend recommended by the directors.

8. *Election of directors and other officers.*—The articles commonly provide for the rotation of directors, and for notice to be given of any intention to propose a new director, which provisions must be carefully followed. For companies without special articles on the subject, Table A, Clauses 78 to 82, provides:—

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place; and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

9. *Appointment and remuneration of auditors.*—

Section 112 of the Act of 1908 provides:—

112. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement, or in any other mode allowed by the articles, not less than seven days before the annual general meeting: Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company, may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and, if so appointed, shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

The chief points to be noted are—

1. Election or re-election of auditors should be left entirely to the shareholders, in which it is inadvisable for the directors to take a prominent part.
2. Remuneration must be fixed by the company in general meeting.
3. "A director or officer of the company shall not be capable of being appointed auditor of the company" (Section 112, Sub-Section (3)).
4. Fourteen days' notice of an intention to nominate an auditor, other than the retiring auditor, must be given to the company, and seven days' notice to shareholders before the general meeting thereof.

10. *Special business* can of course be transacted at an ordinary meeting, provided due notice thereof has been given. There is no need, as was usual at one time, to transact special business at an extraordinary general meeting.

11. *Powers of general meeting as regards management of company.*—Rule in Foss *v.* Harbottle. When an act which is not *ultra vires*, the confirmation of which therefore might be done with the approval of a majority, is done irregularly without such approval, the majority are the only persons who can complain or condone (Foss *v.* Harbottle, 2 Hare 461).

The shareholders must appeal to the company in general meeting in respect of irregularities committed by the directors and no action is maintainable except in a case of fraud (Normandy *v.* Ind, Coope & Co., Limited, 1908, 1 Ch., 84.)

"I think it is most important that the Court should hold fast to the rule [*i.e.* Foss *v.* Harbottle], upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, when the irregularity complained of can be set right at any moment" (Lindley, L. J., in Browne *v.* La Trinidad, 37 Ch. D., p. 17).

The Court in The Southern Counties Deposit Bank *v.* Rider and Kirkwood (73 L. T. 374) declined to interfere because a notice convening a meeting was passed at a meeting of a board of directors at which a quorum was not present, but in *re* John T. Clark (*ante*, p. 67) the Court declined to sanction an irregularity, even though such irregularity would result in no harm.

Rule in Foss v. *Harbottle.*—"In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, then there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes" (Mellish, L. J., in MacDougall *v.* Gardiner, 1875, 1 Ch. D., at p. 25). The will of the majority, to be effective under this rule, must have been expressed in accordance with the articles at a meeting properly convened, properly constituted, and properly held (see Tiessen *v.* Henderson, *ante*, p. 97), and the Court will interfere if the act complained of is a fraud on the minority and where it is necessary to waive the general rules in order that justice may be done.

Articles may not be altered giving power enabling the majority to expropriate the minority on payment of proper compensation (Brown *v.* British Abrasive Wheel Co., 1919, 1 Ch. 290).

12. *Limitation of control of management by company in general meeting.*—Where articles provide that the business of a company is to be managed by the directors, who might exercise all the powers of the company "subject to such regulations (being not inconsistent with the provisions of the articles)" as may be prescribed by the company in general meeting, it was held that when an article provided that no acquisition or letting of premises should be valid in the event of a managing director dissenting therefrom, and the company in general meeting,

notwithstanding the dissent of a managing director, passed at an extraordinary general meeting resolutions by a simple majority of shareholders to acquire and let premises that such resolutions were inconsistent with the articles and that the company must be restrained from action thereon (Quin and Axtens *v.* Salmon, 1909, App. Ca. 442).

Even a resolution of a numerical majority at a general meeting of the company cannot impose its will upon the directors when the articles have confided to them the control of the company's affairs (Automatic Self-Cleansing Filter Syndicate Co. *v.* Cunninghame, 1906, 2 Ch. 34).

13. *Privilege of speech at shareholders' meetings.*—Speeches at a meeting of shareholders, and circulars sent by directors or shareholders to the members, are privileged, on the ground that members have a common interest in the affairs of the company, and in the absence of malice will not support an action for slander or libel (Lawless *v.* Anglo-Egyptian Cotton Co., 1869, L. R., 4 Q. B. 262; Quartz Hill Gold Mining Co. *v.* Beall, 1882, 20 Ch. D. 501).

Newspaper reports of shareholders' meetings are usually not privileged, since such meetings are, as a rule, not public meetings or relate to matters of public interest (Ponsford *v.* Financial Times, 1900, 16 T. L. R. 248). A report to the public press of the proceedings of a general meeting if containing libellous matter is not privileged (Popham *v.* Pickburn, 1862, 7 H. & N. 891), neither is the publication by the directors or shareholders to the world at large of defamatory statements even though contained in the report of a meeting (Davison *v.* Duncan, 1857, 7 E. & B. 229; Purcell *v.* Sowler, 1877, 2 C. P. D. 215).

CHAPTER XVII.

MEETINGS OF SHAREHOLDERS.

Resolutions, Motions, and Amendments Thereto.

ARTICLES usually provide that all business *except* ordinary business, *e.g.* sanctioning a dividend, consideration of accounts, report of directors and auditors, election of directors, election of auditors and the fixing of their remuneration, shall be deemed special business and will require special notice. But general notice of the nature of ordinary business need not be given, neither need notice be given of resolutions relating to such ordinary business if the articles do not so require and they are strictly relevant and within the scope of the notice of the meeting. But notice must be given of resolutions to be proposed at a statutory meeting (Section 65, Sub-section (7)), and also in regard to the election of auditors other than the retiring auditors (Section 112, Sub-section (4) of the Act of 1908). Probably notice need not be given in regard to the election of directors other than the retiring directors, unless the articles require such a notice (see Catesby *v.* Burnett, 1916, 2 Ch. 525). Formal motions, *e.g.* previous question, do not require notice.

There are four kinds of resolutions which may be dealt with by a general meeting.

1. *Ordinary resolutions* may be defined as those which may be passed by a bare majority at any kind of general meeting at which either notice of the intention to deal with the subject-matter of the resolution has been duly given or where the subject-matter of the resolution does not require notice by the articles.

Except in regard to ordinary business as defined by the articles, and unless the articles provide to the contrary, notice of all matters to be dealt with at a general meeting must be given. Notice must be given to the shareholders of the general nature of any special business which may be dealt with by ordinary resolution.

2. *Extraordinary resolutions.*—

Section 69 of the Act of 1908 provides:—

69. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which *notice* * *specifying the intention to propose the resolution as an extraordinary resolution has been given.*

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a declaration of the chairman that the resolution is carried shall, unless a poll be demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purpose of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Extraordinary resolutions therefore require—

(1) Notice of meeting as provided by the articles. If seven days notice is to be given that means seven days *clear* notice, *i.e.* exclusive of day of notice and day of meeting.

(2) One meeting only.

(3) Three fourths majority.

* In Anglo-American Oil Co. *v.* Martin (1914, C. A. (unreported)), a notice was held bad since it omitted to state that the resolution was to be proposed as an extraordinary resolution. The same principle was upheld in MacConnell *v.* E. Prill & Co., 1916, 2 Ch. 57.

An extraordinary resolution in favour of reduction of capital was passed at a meeting at which twelve shareholders who were entitled to vote were present. Of these eight voted for the resolution, two against it, and two did not vote at all. No poll was demanded, and the chairman declared the resolution carried. It was held that the extraordinary resolution had not been duly passed, in respect that a majority of three fourths of the members entitled to vote who were present at the meeting had not voted in its favour as required by Sub-Section (1) of Section 69 of the Act of 1908, and that the chairman's declaration that the resolution was carried did not legalise the proceedings, it being apparent on the face of them that the statutory requirements had not been complied with (*re* John T. Clark & Co., 48 Sc. L. R. 154 —Ct. of Sess.).

(3) Notice must specify that the meeting is convened to pass an extraordinary resolution, and a notice of an intended special resolution is not sufficient notice upon which to propose an extraordinary resolution (see in *re* Bridport Old Brewery Co., 1867, 2 Ch. App. 191).

(4) Copy must be printed and forwarded to the Registrar of Companies within fifteen days from its passing, who shall record the same (Section 70, see *post*, p. 130).

The articles usually specify that certain kinds of business must be transacted by extraordinary resolution and in addition the Act of 1908 requires or permits the passing of extraordinary resolutions in connection with the following:—

(*a*) Winding up an insolvent company voluntarily (Section 182 (3), Crew's *Company Law*, 2nd Edition).

(*b*) Delegating to a company's creditors the power of appointing liquidators (Section 190).

(*c*) Sanctioning an arrangement between a company and its creditors in a voluntary winding up (Section 191); or compromises with creditors, debtors, or contributories (Section 214).

Notice of a meeting to increase the share capital is not sufficient if it merely refers generally to a proposed extraordinary resolution to increase the capital; it must show an intention to make the specific increase embodied in the resolution that is actually passed (MacConnell *v.* E. Prill & Co., 1916, 2 Ch. 57).

3. *Special resolution—*

69. (2) A resolution shall be a special resolution when it has been—

(*a*) Passed in manner required for the passing of an extraordinary resolution; and

(*b*) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than a month, from the date of the first meeting.

Registration and copies of special resolutions—

70. (1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

The following acts, *inter alia*, may be done by special resolution:—

1. Alteration of articles (Section 13 of the Act of 1908, Crew's *Company Law*, 2nd Edition).

2. Change of name, with sanction of Board of Trade (Section 8, Sub-Section (3), Crew's *Company Law*, 2nd Edition).

3. Alteration of objects of company, with sanction of the Court. Section 9 of the Act of 1908 provides that—

9. (1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) To carry on its business more economically or more efficiently; or

(*b*) To attain its main purpose by new or improved means; or

(*c*) To enlarge or change the local area of its operations; or

(*d*) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) To restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

4. Increase or take power to increase capital where there is no power in the articles (Section 41).

5. Reduce or cancel any paid-up share capital which is lost or unrepresented by available assets with the sanction of the Court (Section 46).

6. Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares (Section 41).

7. Convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination (Section 41).

It is not necessary to pass one special resolution under Sub-Section (*b*) for the consolidation and division of shares, and another under Sub-Section (*d*) for the subdivision of the shares; one special resolution is sufficient (*re* North Cheshire Brewery, 1920, 149 L. T. 264).

8. Winding up voluntarily (Section 182) or by the Court (Section 129).

9. Create reserve liability of limited company.

Section 59 of the Act of 1908:—

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

PROCEEDINGS BY SPECIAL RESOLUTION.

Special resolution requirements:—

1. Two meetings at an interval of not less than fourteen clear days, and not more than a calendar month.

   Computation of Time.—"The general rule of law in the computation of time is that fractions of a day are not reckoned. 'An interval of time not less than fourteen days' is equivalent to saying that fourteen days must intervene or elapse between the two dates" (Chitty, J., in *re* Railway Sleepers Supply Co., 1885, 29 Ch. D., pp. 205 and 207).

2. Meetings must be duly convened in accordance with the articles, or if none exist, with Table A.

3. The two meetings may be convened by the same notice if the articles do so provide (North of England Steamship Company, 1905, 2 Ch. 15 (C. A.)). The notice must, however, convene both meetings unconditionally (Espuela Land and Cattle Co., 1900, 48 W. R. 684) unless conditional notices are allowed by the articles (see *ante*, p. 99).

4. It is not necessary that the notice of the first meeting must state that the resolution will be

proposed as an extraordinary resolution, since Section 69 merely says that a special resolution must be *passed* in manner required for the passing of an extraordinary resolution and confirmed by a bare majority (*re* Penarth Pontoon Co., 1911, 56 S. J. 124). The notice should state that it will be a special resolution.

In North of Scotland &c. Steam Navigation Co. (1920, 1 S. L. T. 21) omission to describe a resolution at the first meeting as an extraordinary or special resolution was held not to be failure to comply with statutory requirements, but that is in accordance with the general practice that some intimation should be given to the shareholders that the resolution proposed is, when passed and confirmed, to be a special resolution.

5. *Amendments.*—The notice of the second meeting must state the intention to submit the resolution as passed at the first meeting for confirmation. A special resolution need not follow the exact terms of the notice given under Section 51 of The Companies Act, 1862 (Section 69 (3) of the Act of 1908), but may be amended at the first meeting (Torbock *v.* Westbury (Lord), 1902, 2 Ch. 871).

Since the Act of 1908 provides that it is necessary to give notice of the exact form of resolution to be proposed in regard to extraordinary or special resolutions it is doubtful whether any substantial amendment can be effectively carried. In Torbock *v.* Westbury (*supra*) the amendment of a special resolution which was made at the first meeting without notice for a reduction of directors' remuneration was held to be valid. It is usually impracticable to give adequate notice as required by the articles for amendments of extraordinary or special

restrictions. In any event, the amendment must be relevant and not outside the scope of the notice of the meeting, and must be reasonable.

6. Meetings must be duly constituted—*i.e.* there must be a duly appointed chairman and quorum.

7. Resolution—

   (*a*) At first meeting, must be passed by a three fourths majority, either by show of hands or at a poll;

   (*b*) At second meeting, must be confirmed by at least a bare majority of those who are present and entitled to vote. A poll not having been demanded, the voting was held to be by show of hands (*re* Horbury Bridge Co., 11 Ch. D. 109). Proxies are usually only counted at a poll (Ernest *v.* Loma Gold Mines Co., 1897, 1 Ch. 1), unless the articles expressly provide otherwise;

   (*c*) Must be confirmed in the same form at the second meeting as passed at the first meeting. "The resolution confirmed at the second meeting must no doubt be in the same form as that passed at the first meeting. In other words, the second meeting can only say 'Aye' or 'No' to the resolution passed at the first meeting" (Swinfen Eady, J., in Torbock *v.* Westbury (Lord), 1902, 2 Ch., p. 873);

   At a meeting held to confirm a resolution passed by the requisite majority at a former meeting so as to make it a special resolution, "any amendment would be wholly irrelevant because the single purpose of the meeting was to say 'Aye' or 'Nay'—is the original resolution to stand or fall" (Chitty, J., in Wall *v.* London and Northern Assets Co., 1898, 2 Ch., p. 483);

(*d*) At either meeting a poll may be demanded by such number of members (not exceeding five) as the articles fix, or in default of such provision by any three members;

(*e*) The declaration of the chairman of a meeting of the shareholders of a company that a special resolution has been carried on a show of hands (a poll not having been demanded) is, at any rate in the absence of fraud or obvious mistake, conclusive (and not merely *primâ facie*) of the fact that the resolution has been carried (Arnot *v.* United African Lands, 1901, 1 Ch. 518);

(*f*) And so the declaration of the chairman of a meeting called to pass a resolution under Section 51 of The Companies Act, 1862 (Section 69, Sub-Section (3), of the Act of 1908), is not conclusive where the declaration shows on the face of it that the statutory majority has not voted in favour of the resolution (*re* Caratal (New) Mines, 1902, 2 Ch. 498, and *re* John T. Clark, *ante*, p. 108). Apart from fraud, the declaration of the chairman of a meeting that a special resolution has been passed is conclusive and the Court will not entertain the question whether the resolution was carried by the requisite majority (*re* Hadleigh Castle Gold Mines, 1900, 2 Ch. 419);

(*g*) At a poll the number of votes which each voter is by the articles entitled to is to be taken into account, and votes by proxy are (if the articles so provide, but not otherwise) allowed. The proxy votes for his principal;

(*h*) Must be printed and forwarded to the Registrar of Companies within fifteen days of its confirmation, who shall record the same.

4. *Resolution requiring a specified majority.*—The articles sometimes require that something which may be done shall require a majority of a special character: *e.g.* whether of the whole number of members, or of a certain proportion of the issued capital or classes of capital, or merely of the members present at a meeting.

Motions and Amendments Thereto.

Motions and amendments thereto—

(1) Must be within the scope of the notice convening the meeting, and within the powers of that meeting which purports to deal with them;

(2) Must not raise again a question that has already been decided by the meeting;

(3) Should be affirmative in form—not merely negative of something already proposed—and be in such a form that a definite decision can be arrived at;

(4) Must be dealt with in accordance with the articles: *e.g.* as to notice and being in writing. This only refers to motions and amendments of some importance, and excludes motions relating to points of order or conduct of the meeting which are brought forward and dealt with there and then;

(5) Amendments to ordinary resolutions may be moved without notice unless articles otherwise provide, but they must be relevant and not outside the scope of the notice of the resolution. Amendments to special resolutions may be moved at the first meeting with or without notice, but are out of order at the second or confirmatory meeting (Torbock *v.* Westbury, *ante*, p. 133).

Motions and amendments must be put to the meeting, and need not necessarily be seconded unless the articles specially require this.—"In my opinion, if the chairman put the

question without its being either proposed or seconded by anybody, that would be perfectly good" (James, L. J., in *re* Horbury Bridge Coal Co., 1879, 11 Ch. D., p. 118).

The mover of the amendment not challenging the chairman's ruling is not a waiver of his right to impeach the resolution. As the chairman's refusal to put the amendment had withdrawn a material and relevant question from the consideration of the meeting, the resolution must be set aside, per Lopes, L. J.: "I think that after a chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling; of course, I am assuming that he gives his ruling deliberately, and having the matter sufficiently before him" (Henderson *v.* Bank of Australasia, 1890, 45 Ch. D. 330, 350).

An amendment (*which should be in writing*) *must*—

(1) Be moved after the original question has been proposed from the chair and before that question has been put to the vote;

(2) Relate solely to the motion which it professes to amend, and not be in effect a new proposition on a different subject;

(3) Not be a mere negative;

(4) Be relevant to the motion which it purports to amend;

(5) Not be outside the purposes of the meeting;

(6) Not be inconsistent with anything already agreed upon;

(7) If carried, be put as a substantive motion. If such substantive motion be lost the original proposition is not thereby revived, except when the amendment is practically a different motion and incompatible with the original motion.

In order to get rid of a motion and the amendment thereto, the latter (not being practically a different motion) is sometimes carried, and lost as a substantive motion.

Where there are more amendments than one they should be put to the meeting in the order in which

they affect the main question and then the main question in its original form or as finally amended. Strict adherence to the formality of putting motions and amendments is not essential, provided they are put to the meeting in such a way that those present understand what it is that they are called upon to decide (*ex parte* Stevens, *ante*, p. 37).

When at a meeting every opportunity for full discussion and for the moving of any amendment has been afforded and an adjournment has been made for the purpose of more conveniently taking a poll, members have no right at an adjournment to reopen the discussion by moving other amendments or resolutions.

Resolutions and Amendments Thereto.

To be valid these must comply with the following requirements :—

(1) *Intra vires* (*i.e.* within the powers) the company ;
(2) Not violate any statute or principle of law ;
(3) Not contrary to public policy ;
(4) Not contrary to the Acts of 1908 to 1917 or the articles of the company.

Business at adjourned meetings.—Usually only business can be transacted at the adjourned meeting which has been left unfinished at the original meeting, and proxies are, in the absence of express provision, invalid for the adjourned meeting (see *post*, p. 146). In Catesby *v.* Burnett, 1916, 32 T. L. R. 380, the articles provided that a member should not be qualified to be elected a director unless fourteen clear days' notice of the intention in that behalf were given to the company before the *day of election*. At the date of ordinary general meeting there were two retiring directors, but the meeting was adjourned without any election of directors. Notice had been given fourteen clear days before the adjourned meeting, and the two new directors elected thereat were held to be validly appointed, *i.e.* date of adjourned meeting was the day of election. If the articles had provided for fourteen days' notice before the annual general *meeting* obviously the election could not have been sustained (see also *Incorporated Accountants' Journal*, May, 1916, p. 165).

CHAPTER XVIII.

MEETINGS OF SHAREHOLDERS.

Voting.

AT Common Law, votes at all meetings are taken by show of hands, and when there is a mode of voting known to the community that mode must be followed unless a binding rule to the contrary is shown (in *re* Horbury Bridge Co., 1879, 11 Ch. D., 109, 113, and 115).

The manner and method of voting is usually determined by the articles. Section 67 of the Act of 1908 :—

67. In default of, and subject to, any regulations in the articles . . . . (4) Every member shall have one vote.

The right of an alien enemy of voting either personally or by proxy in respect of shares in an English company is suspended during war (Robson *v.* Premier Oil &c. Co., 1915, 2 Ch, 124 C. A.).

A shareholder's vote is a right of property which he may use as he pleases. The propriety or impropriety of his motive is immaterial (Jessel, M. R., in Pender *v.* Lushington, 1877, 7 Ch. D. at p. 75). "There is no obligation on a shareholder of a company to give his vote merely with a view to what other persons may consider the interest of the company at large. He has a right, if he thinks fit, to give his vote from motives or promptings of what he considers his own individual interests." In Burns *v.* Siemens Bros., 1919, 1 Ch. 225, where articles provided that the first of the joint holder of shares only could vote, it was held that in order to enable them effectively to exercise their voting powers they were entitled to have their holding split into two joint holdings, with their names in different orders. A majority of members will not be allowed by vote to commit a fraud on the minority (Menier *v.* Hooper's Telegraph Co., 1874, 9 Ch. 350). Directors are usually forbidden by the articles to vote as directors on contracts in which they are interested, but may vote as shareholders (see East

Pant du United Lead Mining Co. *v.* Merryweather). Even where the articles allow directors to enter into contracts with their companies the Stock Exchange requires that they should not be allowed to vote upon matters in which they are interested (see *ante*, p. 82).

Articles provided that no member shall be entitled to vote whilst any calls are outstanding and that shares were liable to forfeiture for nonpayment. Shares were forfeited and resold by the company to a purchaser, to whom a certificate was issued, stating that he was deemed to be the holder of the shares discharged from all calls due. It was held that the purchaser was not entitled to vote whilst any calls were due from the original holder of the shares (Randt Gold Mining Co. *v.* Wainwright, 1901, 1 Ch. 184). Where an executor under the articles shows that he alone has the right to transfer shares he has the right to vote, subject to any other provisions restricting that right, although he holds the shares subject to an equitable charge (Marks *v.* Financial News, 1919, 35 T. L. R. 681).

Votes of Members.

Table A, which only applies to certain companies, provides (see *post*, p. 205 *et seq.*):—

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members. (See Burns *v.* Siemens, p. 155.)

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

Section 68 of the Act of 1908 provides for the representation of companies at meetings of other companies.

68. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

1. *Show of hands.* — Unless the articles otherwise provide—

1. Voting, in the first instance, is usually by show of hands; or by voice (*ante*, p. 40).
2. Everyone personally present and entitled to vote has one vote only, independent of the number of shares or proxies he holds. Where articles allow voting by proxy, the chairman in ascertaining the number of votes given on a show of hands must count the vote of each person who holds proxies as a single vote, and not count a vote for each of the members whose proxy he holds; but if the proxy is *not* a member he can apparently vote on a show of hands (Ernest *v.* Loma Gold Mines, 1897, 1 Ch. 1). It is desirable, since members may be entitled on occasions to attend meetings at which they are not entitled to vote, that all attending should sign their names in the attendance book on entering the room.

Table A provides:—

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

This provision by Table A follows Section 69, Subsection (4), in respect of extraordinary or special resolutions

that a chairman's declaration is conclusive as to whether a resolution is carried in the absence of a poll applies to all resolutions *if accompanied by an entry in the minute book of the company*, unless fraud or obvious mistake be proved. This will prevent any question being reopened in legal proceedings, even if evidence is forthcoming that the chairman's declaration was wrong (Arnot *v.* United African Lands, 1901, 1 Ch. 518), unless there is an apparent error, *e.g.* when the declaration shows on the face of it that the statutory majority has not voted in favour of the resolution (*re* Caratal (New) Mines, 1902, 2 Ch. 498).

Where articles give a right to demand a poll to members holding at least a specified number of shares, *joint holders* of the specified number of shares may demand a poll without the support of any other member (Burns *v.* Siemens, 1918, 2 Ch. 324).

Where articles declared that if votes were not disallowed at the meeting they would be good for all purposes it was held in Wall *v.* London & Northern Assets Corporation (1891, 1 Ch. 550) that in the absence of fraud or bad faith the resolution could not be impeached on the ground that votes were improperly received; and in Betts *v.* Macnaghten (1910, 1 Ch. 430) it was held that, notwithstanding a declaration by the chairman, the notice of the meeting may be looked at to see if the resolution is in order. Neither is a chairman's declaration conclusive where there is no quorum since there would be no meeting, and a chairman has no *locus standi* except at a meeting, *i.e.* a properly constituted meeting.

Casting Vote.

The chairman has no casting vote at Common Law. To give him this power express provision must be made in the articles. If he has a casting vote and the votes given will be equal if certain votes which are challenged are invalid he may give his casting vote contingently, and if the votes challenged are subsequently disallowed the casting vote so given will be valid (Bland *v.* Buchanan, 1901, 2 K. B. 75). If the chairman does not exercise his

casting vote, which may only be given when there is an equality of votes, *i.e.* equality of valid votes, the motion, of course, is not carried.

A prohibition in the company's articles against a director's voting in respect of any matter in which he has an interest does not preclude him from voting as a shareholder at a general meeting in respect of any such matter (East Pant du United Lead Mining Co. *v.* Merryweather, 2 H. & M. 254).

2. *Demanding a poll.*—Members of a company have a right to demand a poll at Common Law unless the articles expressly exclude such a method of voting. Table A, Clause 56, provides that a poll must be demanded by three members. Apparently, if there is no provision in the articles as to the right of demanding a poll, one member may demand a poll (Campbell *v.* Maund, 1836, 5 A. & E. 865), but this is only applicable to ordinary resolutions and does not apply to extraordinary or special resolutions. It should be demanded immediately after the show of hands has been declared—the latter being thereby nullified—and it is the chairman's duty to grant it, and to fix the time and place for the poll in accordance with the regulations on the subject, if any. It was held in R. *v.* Wimbledon Local Board (8 Q. B. 458) that the right to demand a poll existed by the Common Law, but may be excluded by express provision. "When a poll is demanded, it is an abandonment of what was done before; and that everything exterior is not of the substance of the election, nor to be so received" (Sir W. Scott, in Anthony *v.* Seger, 1 Hagg Cons., p. 13).

Section 69 (4) of the Act of 1908 provides—

69. (4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

This appears to mean that a poll may be demanded by such number of members not exceeding five as the

articles may provide, *i.e.* any number less than five may be provided for by the articles, but if the articles are silent the number must be three.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

The articles control the manner in which a poll shall be taken, and generally leave it to the directors or the chairman of the meeting; but he is not thereby authorised to alter the prescribed method of voting.

It is the duty of the chairman to decide whether a poll is properly demanded in accordance with the articles, and generally he has to determine how the poll is to be taken.

3. *Taking a poll.*—

1. A poll may be taken there and then if the articles so provide. In *re* Chillington Iron Co. (1885, 29 Ch. D. 159) the articles gave power to the chairman to direct how a poll should be taken. He directed the poll to be taken then and there, and the poll was held to be rightly taken.

   But a chairman cannot enlarge the power of voting, *e.g.* where voting papers are not contemplated by the articles he cannot direct that a poll should be taken by means of polling papers signed by the members and delivered at the offices of the company on a fixed day (McMillan *v.* Le Roi Mining Co., 1906, 1 Ch. 331).

2. A member may vote personally at a poll, though not present when the poll was demanded (Campbell *v.* Maund, 5 A. & E. 865).

3. Resolutions must be put to the poll separately and not *en bloc*, otherwise the poll is invalid. All the resolutions may, however, be included in one sheet of paper, to be separately marked by the voters (Patent Wood Keg Syndicate *v.* Pearse. 1906, W. N. 164; Blair Open Hearth Furnace Co. *v.* Reigart, 1913, 108 L. T. 665).

4. Scrutineers are often appointed to report as to the correctness, but this, though desirable, is not necessary unless the articles expressly provide for such appointment (Wandsworth and Putney Gas Co. *v.* Wright, 1870, 22 L. T. 404).

5. The chairman should fix the hours during which the poll is to take place; if he does not do so he cannot close the poll so long as votes are coming in (R. *v.* St. Pancras, 1839, 11 H. & E. 15); but after waiting a reasonable time, if no more voters present themselves, he may declare the poll closed. Any voter who has been improperly excluded may invalidate a poll (R. *v.* Rector &c. of St. Mary, Lambeth, 8 A. & E. 356).

6. The right to vote and the number of shares held are determined by reference to the register of the members. "The register of shareholders, on which there can be no notice of a trust, furnishes the only means of ascertaining whether you have a lawful meeting or a lawful demand for a poll, or of enabling the scrutineers to strike out votes" (Jessel, M. R., in Pender *v.* Lushington, 6 Ch. D., p. 78).

7. A poll is regarded as part of the proceedings of the day. "The taking of a poll is a mere enlargement of the meeting at which it was demanded" (Brett, L. J., in R. *v.* Wimbledon Local Board, 1882, 8 Q. B. D. 464; see also Shaw *v.* Tati Concessions, *post*, p. 151).

8. Under Table A, or under the common form of articles, a poll cannot be taken by sending voting papers to the members, to be returned by post. They or their proxies must attend and give the votes personally. A poll by direct voting papers must be expressly provided for (McMillan *v.* Le Roi Mining Co., 1906, 1 Ch. 331).

Table A provides—

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Proxies.

There is no Common Law right to vote by proxy, and this power can only be given by express provision in the articles.

Appointment of Proxy.—In Colonial Gold Reef, Limited *v.* Free State Rand, Limited (1914, 1 Ch. 382), articles provided that no person should be appointed a proxy who was not a member of the company, and by Article 73 that no objection should be made to the validity of any vote except at the meeting or poll at which such vote should be tendered, and every vote not disallowed at such meeting or poll, and whether given personally or by proxy, should be deemed valid for all purposes whatsoever. Proxies had been given to A, who was not a member of the company, and failing him to B, who was a member. A voted under these proxies, and no objection was taken at the time. *Held*—that the validity of these votes could not be after disputed.

A vote given by the representative of a company under a resolution passed pursuant to Section 68 of the Act of 1908 can be properly admitted by the chairman on the evidence afforded by a copy of such resolution. Articles of an English company provided that "the instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in that behalf, or, if such appointor is a corporation under its common seal." A South African company, having no common seal

and not required to have one, was a shareholder in the English company, and under the hands of two directors appointed an attorney in England to vote on its behalf with power of substitution. Acting under this power the attorney appointed himself proxy in the form prescribed by the articles, and claimed to vote either under the power of attorney or under proxy. The chairman rejected this vote. *Held*—that the requirement of a common seal in the articles only applied to corporations having a common seal according to English law, and that the attorney of the South African company was entitled to vote at any rate under the proxy, if not under the power of attorney itself. Where articles prescribe that proxies must be in a specified form or as near thereto as circumstances permit, and the specified forms is a proxy applicable to a single meeting, general proxies, properly stamped, should not be excluded (Isaacs *v.* Chapman, 1915, 32 T. L. R. 327).

Where articles provided that a shareholder only could be appointed to act as a proxy, it is no objection to a proxy duly lodged that an unqualified person is named therein, provided the disqualification is removed before the proxy is used (Bombay-Burmah Co. *v.* Shroff, 1905, A. C. 213).

Table A (which applies when there are no special articles) provides:—

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority . . . . shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

COMPANY, LIMITED.

I, , of , in the county of , being a member of the COMPANY, LIMITED, hereby appoint , of , as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof.

Signed this day of .

In Peel *v.* London and North Western Railway Co. (1907, 1 Ch. 5) it was held that it was the duty of the directors to inform the shareholders of the facts of their policy, and the reasons why they considered that this policy should be maintained and supported by the shareholders, and that they were justified in trying to influence and secure votes for this purpose, and accordingly that expenses which had been *bonâ fide* incurred in the interests of the company were properly payable out of the funds of the company: *e.g.* issuing of stamped proxy paper containing the names of three of the directors as proxies, with a stamped cover for return.

The provisions in the articles relating to and governing proxies must be adhered to.

1. The form of proxy must be substantially the same as that provided by the articles.

2. If required by the articles, it must be deposited with the company for a certain number of hours prior to the meeting.

3. If sent by post, it should be addressed to the proper officers, so as to get into the hands of the company.

   In Burnett *v.* Gill, *The Times*, 13th June, 1906, p. 4, articles provided that no person should be entitled to vote as a proxy unless the instrument appointing him should be deposited at the office of the company forty-eight hours before the meeting. It was held not only must the

instrument be deposited at the office of the company forty-eight hours before the meeting, but it must be addressed to the proper officer of the company. When addressed to a person without any reference to the company or any intimation that it was other than an ordinary business communication addressed, too, to the care of a person not named as an official of the company and at an office not solely belonging to the company, but where that person carried on business on his own account, it could not be considered as such a "deposit" as required by the articles, the object of which was to give time for examination of a document of such importance and for authentication of the person purporting to give it as duly qualified to do so.

4. If the articles provide attestation to a proxy it must not be omitted. "In my opinion, the right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders, and where parties have a right depending upon the contract between them and the other parties, there, in my opinion, all the requisitions of the contract as to the exercise of that right must be followed. In my opinion, therefore, the proxy papers which were not attested as required by the articles were improperly admitted by the chairman" (Cotton, L. J., in Harben *v.* Phillips, 23 Ch. D., p. 28).

5. Proxy paper for one specified meeting requires a penny stamp (adhesive or impressed), which must be cancelled. An adhesive stamp used on a letter or power of attorney for appointing a proxy to vote at a meeting is sufficiently cancelled within the meaning of Section 8, Sub-Section (1), of The Stamp Act, 1891, by the writing across it of part of the name of the person cancelling it, or the date of cancellation alone, or other marks of a defacing nature (McMullen *v.* "Sir Alfred

Hickman" Steamship, 1902, 71 L. J. Ch., 766). This proxy cannot be stamped after execution unless executed abroad (Finance Act, 1907, Section 9). If required for several meetings (*i.e.* a general proxy) a ten-shilling stamp is necessary (Stamp Act, 1891, Section 80). See p. 153 as to use of general proxies.

6. The member giving the proxy must be entitled to vote: *e.g.* articles may disqualify members whose calls have not been paid. A call is not due until the day fixed for payment, and the amount payable on allotment is not a call.

7. Unless the articles permit, or the shares have been transferred into their names as members, neither the representatives nor the trustee of a bankrupt shareholder may vote.

8. The person appointed must be competent to act as a proxy: *e.g.* some articles require that no person not a member may act as proxy. If the meeting is of a particular class the proxy must be held by a person of that class (*re* Madras Irrigation Co., 1881, W. N. 20). But by Section 68 of the Act of 1908 any company which is a member of another company has a statutory right to nominate "any person to act as its representative of that other company."

9. Alternative persons may be named in a proxy in order to guard against failure to attend.

10. If the proxy states "in my absence to attend and vote," the presence of the appointor necessarily revokes the proxy.

11. If the appointor of a proxy attends the meeting himself his presence does not necessarily avoid the instrument of proxy, but if he votes before his proxy has voted for him, he impliedly revokes the proxy (Knight *v.* Bulkeley, 5 Jur. N. S. 817).

12. A proxy which was valid for an original meeting would be good for an adjourned meeting, as a meeting includes an adjournment of it.
13. Deposit in due time of a later proxy revokes one of earlier date.
14. Death of appointor of proxy revokes it.
15. Proxies are only to be counted on a poll, but may apparently be counted on a show of hands if a proxy is *not* a member of the company (Ernest *v.* Loma Gold Mines, 1897, 1 Ch. 1).

Proxies and Adjourned Meetings.

An adjourned meeting, as regards notice, is regarded in law as a continuance of the ordinary meeting (Scadding *v.* Lorant, *post*, p. 152). No new notice, when the adjournment is to a fixed date, is necessary, but an adjournment *sine die* would require a fresh notice (Wills *v.* Murray). As regards proxies which are lodged after the date of the original meeting, but before the adjourned meeting, it is now settled that they are invalid (McLaren *v.* Thomson, 1917, 2 Ch. 261, C. A., following Scadding *v.* Lorant, *ante*) *unless the articles make some provision as follows:* "The instrument appointing a proxy shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting, whether such meeting be an original *or an adjourned meeting*" (see also *ante*, p. 138, as to business at adjourned meetings).

In Shaw *v.* Tati Concessions (1913, 1 Ch. 292) a poll demanded at a meeting was directed to be taken at a future date, but the meeting itself was not adjourned. It was held that the mere postponement of the poll was not an adjournment *ad hoc* of the meeting within the meaning of an article allowing the lodgment of proxies forty-eight hours before a meeting or adjourned meeting, but the original meeting continued for the purpose of the poll, and no fresh proxies could be lodged.

CHAPTER XIX.

MEETINGS OF SHAREHOLDERS.

Adjournments, Postponements, and Minutes.

Adjournments.

MOTIONS for adjournment can generally be brought forward at any period of the meeting, and take precedence of any matter then under consideration. Such motions, unless specially provided for otherwise, need not be in writing or formally seconded.

"It is impossible to support an election which was proceeded in by a part only of the electors who remained behind after the rest were gone away, in consequence of a dissolution of the assembly to which no objection was made at the time" (Grove, J., R. *v.* Gaborian, 11 E., p. 90).

But (see below) if the chairman has improperly attempted to stop the meeting against the wish of those present they may continue the business in his absence.

As regards notice, an adjourned meeting is regarded in law as a continuance of the ordinary meeting (Scadding *v.* Lorant, 3 H. L. C. 418), and a fresh notice is not therefore necessary (Wills *v.* Murray, 4 Ex. 843), unless, of course, the articles require such a notice to be given.

"But, in my opinion, the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure . . . . The meeting by itself can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like" (Chitty, J., in National Dwellings Society *v.* Sykes, 1894, 3 Ch., p. 162).

The power of adjournment, apart from articles, seems to rest entirely with the meeting, *i.e.* a majority of those present, and not with the chairman. But it is a little doubtful whether a majority can insist upon an adjournment unless the business for which the meeting has been convened is completed. It depends largely on the particular circumstances of each case, *e.g.* whether the majority is acting *bonâ fide* or tyranically (see Catesby *v.* Burnett, p. 138).

Provided the object is to facilitate and not to frustrate the business of a meeting, and there is no provision as to adjournment of general meetings in articles—*e.g.* to take a poll—the chairman may adjourn a meeting of his own authority. "It is on him that it devolves, both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to his being called upon to answer for his conduct if he has done anything improperly" (Denman, C. J., R. *v.* D'Oyly, 12 A. & E., p. 159).

When "the chairman may, with the consent of the members present at any meeting, adjourn the same," the chairman is not thereby bound to adjourn. He has an absolute discretion. "Upon the true construction of Article 66, the chairman is not bound to adjourn the meeting even though a majority of those present desire the adjournment" (Herschell, Lord, in Salisbury Gold Mining Co. *v.* Hathorn and Others, 1897, App. Ca., p. 274).

But as regards the statutory meeting, the power of adjournment is in the hands of the meeting and not that of the chairman.

Section 65, Sub-section (8), provides the *meeting* may adjourn from time to time.

Table A, Clause 55, provides:—

55. The chairman may, with the consent of any meeting, at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took

place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Postponements.

The directors of a limited company, in the absence of express authority in the articles of association, have no power to postpone a general meeting of the company properly convened (Smith *v.* Paringa Mines, 1906. 2 Ch. 193).

If they endeavour to exercise such a power the shareholders can, if they think fit, meet at the original appointed place, day, and time, and transact all the business which was properly before the meeting as first convened. If the directors wish to postpone a meeting, the only way is to formally meet and get the meeting to adjourn itself to a more suitable and convenient time.

Minutes of General Meetings.

Section 71 of the Act of 1908 provides:—

71. (1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minutes if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

In proceedings against a company or its directors the absence from the minutes of any reference to a subject is usually regarded as *primâ facie* evidence that it was not brought before the company or the directors, but express evidence may be given to prove what was in fact done and what resolutions were passed. (In *re* Fireproof Doors, 1916, 2 Ch. 142).

Minutes of meetings of shareholders may fairly be open to the inspection of members—

(1) When duly signed by the chairman are *primâ facie* evidence of the proceedings which it purports to minute, until the contrary is proved. The confirmation of the minutes by a meeting *merely verifies their accuracy;* it does not necessarily mean that such minutes are adopted or that the resolutions therein are confirmed or ratified see *ante*, p. 81). "The minutes in the books are to be received not as conclusive but as *primâ facie* evidence of resolutions and proceedings at general meetings; and also it may be added, and I think correctly, that inasmuch as the chairman who presides at such meetings, and has to receive the poll and declare its result, has *primâ facie* authority to decide all emergent questions which necessarily require decision at the time, his decision of these questions will naturally govern, and properly govern, the entry of the minute in the books; and, though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minute book following the decision of the chairman, that the result of the poll was different from that there recorded" (Selborne, L. C., in *re* Indian Zoedone Co., 1884, 26 Ch. D., p. 77).

The chairman is not bound to sign the minutes *after* confirmation by a succeeding meeting, though it is usually desirable for him to wait until they are confirmed.

It is customary for the minutes of a meeting to be read or taken as read at the next meeting and for the then chairman to ascertain from the meeting whether they are a true and accurate record of what was done at the preceding meeting, and to sign them if approved; or if any amendment is required it is first made and initialled by

him and the minutes are then signed. It is usual also to have on the amendment to the resolution "that the minutes of be signed as correct" recording the alteration in the minutes noted in the succeeding minutes of the proceedings. The responsibility for the accuracy of the minutes is thus properly borne by the meeting, but of course Section 71 (*supra*) only provides for the signature of the chairman *without verification by the meeting.*

Where the articles provide, as in Table A, Clause 56, respecting entry of declaration of chairman as regards the result of a poll, that the signed minutes of the proceedings at a general meeting are conclusive evidence that the proceedings were regular, the Court may not only take note of any apparent irregularity in the meeting itself, but may also inquire into any matter dealt with at the meeting which does not appear in the minutes—*i.e.* may go behind the minutes (Betts & Co. *v.* Macnaghten, 1910, 1 Ch. 430).

Presumption failing minutes.—"It was the duty of the company to keep exact and accurate minutes of what took place at their general meetings, and that if those minutes are not forthcoming it must be assumed as against the company that whatever the directors ought to have brought forward at that general meeting, whatever then ought in conformity with the antecedent proceedings of the directors to have been submitted to the shareholders, that was actually so submitted" (per Lord Westbury, L. C., in *re* British Provident &c. Assurance Society, Lane's Case, 1 De. G., J. & S., p. 509).

In any event they are only *primâ facie* evidence of what was done at the meeting. Minutes are not exclusive evidence of what takes place at a meeting. An unrecorded resolution may be

proved *aliunde* (*i.e.* from another place or person) (Knight's Case, 1867, L. R. 2 Ch. 321). In *re* Fireproof Doors, 1916, 2 Ch. 142.

(2) Such entries are not the only evidence, and they may be contradicted by other evidence (Tothill's Case, L. R. 1 Ch. App. 85).

"As they were directors, the minute is admissible against them; but none the less does other evidence appear admissible, though the existence of the minute is a circumstance to be considered in judging of its weight" (Stirling, J., in *re* Pyle Works No. 2, 1891, 1 Ch. 184).

(3) Are occasionally read, or if previously circulated to the members, taken as read, at the next following meeting, and submitted for verification of their correctness.

(4) If regarded as a correct report of the proceedings by those members present at that meeting they are signed by the chairman.

(5) If considered incorrect, they may be modified.

(6) The chairman of the meeting, or more usually of the succeeding meeting of directors, whether present or not at the previous meeting, may, in accordance with a very usual provision in the articles, sign the minutes. In Southampton Dock Co. *v.* Richards (1 M. & G. 448) it was held that the signature of the minutes of the meeting by the chairman at the following meeting at which the same chairman presides is sufficient.

(7) Minutes once made and signed should never be altered or corrected. "I trust I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything" (Esher, M. R., in *re* Cawley & Co., 42 Ch. D., p. 226).

(8) "I hold that the directors ought to place on record, either in formal minutes or otherwise, the purport and place of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right" (Kekewich, J., in *re* Liverpool Household Stores Association, 1890, 59 L. J. Ch., p. 618).

(9) The signature of the chairman to the minutes embodying the terms of a contract may be sufficient to satisfy the Statute of Frauds (Jones *v.* Victoria Graving Dock, 1877, 2 Q. B. D. 314).

(10) A director who is present at a meeting at which the minutes of a previous board are read and confirmed as correct is not thereby responsible for what was done at such meeting (*re* Lands Allotment Co., 1894, 1 Ch. 616).

Minutes of meetings of creditors and contributories under a winding-up by the Court:—The Companies (Winding-up) Rules, No. 138, provides that the chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting. These are the only proper record of the proceedings (*re* Radcliffe, 1875, 10 Ch. 631).

Section 156 of the Act of 1908 and Rule 166 also provides that the liquidator in a compulsory winding up shall keep minutes of the proceedings of meetings of creditors or contributories, or of the committee of inspection, which are to be open for inspection by the creditors and contributories, subject to the control of the Court.

CHAPTER XX.

MEETINGS OF SHAREHOLDERS

Privilege in Speeches at General Meetings.

1. When shareholders *qua* shareholders meet together for the purpose of discussing matters affecting their personal interests untrue defamatory statements are privileged—at least to the extent of the following limitations: "The question is whether he is using the occasion honestly or abusing it" (Esher, M. R., in Royal Aquarium *v.* Parkinson, 1892, 1 Q. B. 443).

In slander or libel the term "privileged communication" "comprehends all cases of communications made *bonâ fide* in pursuance of a duty, or with a fair and reasonable purpose of protecting the interests of the party using the words . . . . It is true that the facts proved are consistent with the presence of malice as well as its absence . . . . in cases of privileged communication, malice must be proved, and therefore its absence must be presumed until such proof is given" (Maule, J., in Somerville *v.* Hawkins, 10 C. B. 589).

In George *v.* Goddard (2 F. & F. 689), words were spoken at a meeting for the election of an overseer, imputing to a person put up for re-election that he had misappropriated parish moneys while holding the office before. Cockburn, C. J., said: "I shall tell the jury that the occasion was privileged; but that the statement, though made on such occasions, will be unprivileged if the making it was a malicious abuse of the occasion. They have a right to ascertain the real meaning and intention of the plaintiff in the words complained of, notwithstanding other words of courtesy and kindness."

(*a*) *When the Press is present uninvited.*—In Pittard *v.* Oliver (1891, 1 Q. B. 474) certain defamatory statements were made without malice, and *bonâ fide* believing them to be true, at which,

in accordance with regular custom, reporters were present at a meeting of guardians. It was held that the privilege which attached to the occasion was not taken away by the presence at the meeting of reporters or persons other than the guardians.

(*b*) *When the Press or public is present by express invitation of the person making the defamatory statements.* In Parsons *v.* Surgey (4 F. & F. 247) a shareholder of a railway company summoned a meeting of shareholders, expressly invited reporters to attend, and made certain defamatory statements at the meeting. Cockburn, C. J., said: "The matter was certainly one of great interest and importance to the shareholders, and the discussion or publication of the results to them would have been excused. It could not, however, be a privileged communication, because others besides the shareholders were invited to attend the meeting; and it was particularly stated that the representatives of the public press would be there."

2. Newspaper reports of the proceedings of a meeting, if containing defamatory statements, are not privileged. "A fair account of what takes place in a Court of Justice is privileged . . . . But it has never yet been contended that such a privilege extends to a report of what takes place at all public meetings" (Campbell, C. J., in Davison *v.* Duncan, 7 E. & B., p. 231).

In Popham *v.* Pickburn (1862, 7 H. & N. 891) a newspaper proprietor published without any comment a report made by a medical officer of health to a vestry board which contained libellous matter. Wilde, B., said: "Undoubtedly the report of a trial in a Court of Justice in which this document had been read would not make the publisher thereof liable to an action for libel . . . . But no case has decided that the reports of what takes place at the meeting of such a body are so privileged" (at p. 897).

In Ponsford *v.* Financial Times (1900, 16 T. L. R. 248) it was held that the publication of a fair and accurate report in a newspaper of the proceedings at a shareholders' meeting, at which defamatory statements were made on the secretary, was not privileged since they were not of public concern, and the publication of them was not for the public benefit and was therefore not protected by The Law of Libel Amendment Act, 1888 (see *ante*, p. 59).

3. Reports sent to members of a company are *primâ facie* privileged (Lawless *v.* Anglo Egyptian Cotton Co., 1869, 4 Q. B. D. 262). In Waller *v.* Loch (7 Q. B. D. 619), "A" interested herself in obtaining subscriptions for the relief of the plaintiff. "B," who was interested in the case, applied to the defendant (Secretary of the Charity Organisation Society) for information as to plaintiff's character and received an unfavourable report, which, by leave of the secretary, she communicated to "A." The subscriptions were thereupon withdrawn.

Held—That the report was a privileged communication, and that, in the absence of proof of malice, the action could not be maintained.

In Quartz Hill Consolidated Gold Mining Co. *v.* Beall (20 Ch. D. 501), in which an order for an injunction was discharged, a solicitor acting for some shareholders in a company printed and circulated, but only among the shareholders, a circular strongly reflecting on the mode in which the company had been brought out, and proposing a meeting of shareholders to take steps to protect their interests. Jessel, M. R., said: "The circular appears on the face of it to be in the nature of a privileged communication. . . . In the present case the defendant says he is acting *bonâ fide*, and there is no evidence against him; but if there were I think a judge should hesitate long before he decides so difficult a question as that of privilege upon an interlocutory application, the circular being, on the face of it, privileged, and the only answer being express malice."

For privilege in speeches at directors' meetings see *ante*, p. 79.

PART III.

PUBLIC SPEAKING

BY THE

LATE CAPTAIN GEORGE GOODES, M.C.

Formerly Professor of Elocution, Regent Street Polytechnic, London,

AND

HINTS ON PUBLIC SPEAKING

EDITED BY

THE AUTHOR.

CHAPTER XXI.

THE ART OF PUBLIC SPEAKING.

THE advantage to public speakers of the mastery of the elements of elocution is being realised more and more every year. In the past there has been a common prejudice against it: it being imagined that the study of this subject results in pedantry, artificiality, and theatricality; but this prejudice is rapidly disappearing. It is only the inadequate study of elocution that can have these distressing results.

It is not possible in the limited confines of this chapter to deal in detail with this subject or to give exercises for students of elocution who wish to eradicate bad habits or to cultivate or develop natural gifts. We shall only, therefore, offer certain hints which may be of general guidance to students, which, to be effective, should be supplemented by regular elocutionary exercises.* A ton of practice with an ounce of theory should be the rule.

The following considerations are of primary importance in the art of public speaking:—

1. To obtain a natural voice production.

The first consideration of every public speaker should be to obtain a natural voice production—and this is not so easy as it appears, the unusual conditions and the consequent nervous self-consciousness having the most unexpected effects on the vocal apparatus.

In order to retain a natural voice production relaxation of the muscles of the throat must always be preserved. This can be done by an effort of the will and by vocal exercises. In order that the voice may have the greatest possible carrying power it must be directed to the hard

* For elocutionary exercises &c. see Bagley and Goodes's "The Student's Elocution Book" (Simpkin & Marshall, 1s. 6d. net).

palate which is immediately above the front teeth; this action will free the throat of all effort and minimise fatigue. Much may be done to improve the voice production by merely an effort of will. If the voice is dull and muffled it will have a nauseating effect on the audience, or if a speech is delivered in a monotone the effect will be the same.

2. To obtain an arresting delivery which will impress the audience with the sincerity of the speaker.

The aim of every speaker should be to obtain an arresting delivery that will impress his hearers with his vital mentality and the sincerity of his utterance. This delivery can never be obtained with a closed throat, but the speaker should keep *the idea* of the front of his mouth in mind, and speak as much as possible with his lips and front teeth. The volume and control of the voice may be increased by breathing exercises, which should be assiduously practised. As the voice is merely breath in vibration, the importance of this cannot be exaggerated.

3. To get rid of apparent nervousness.

The first effect of nervousness is to deprive one of breath, and this can only be counteracted by long practice of breathing exercises. It is an excellent plan, with this object in view, always to fill the lungs deliberately before commencing to speak. Perhaps the greatest difficulty of the nervous speaker is the control of breath, voice, and movement. In order to keep this control and to retain repose the speaker should stand in an upright position with shoulders back and head evenly poised; he should not avoid looking at his audience, nor should he fix his gaze on any one person or portion of his audience, but should look at them generally, thus keeping personal control over everyone; finally, he should avoid all nervous, fidgety movements; any twitching or constantly repeated movement has a most undesirable effect on the audience, their attention being diverted from the matter in hand to the antics of the speaker.

4. To perfect articulation and thereby to make the best use of the voice.

When all that is possible has been done for the production of voice, consideration should be given to the mechanism of articulate sound; in other words, a speaker should endeavour to perfect his articulation and so make the greatest possible use of the voice he possesses.

As the elements of speech consist of vowels and consonants we may briefly consider our utterance of these sounds.

A *vowel* is a volume of breath emitted in a particular shape and position. While it is not possible for us to deal here with all the vowel sounds separately, yet it may be taken as an excellent principle that we should direct all the sixteen vowel sounds on to the front teeth and keep them as free as possible from the throat or nasal passages. It is very important that all the passages of the throat and nose should be kept perfectly *clear*, or it will be impossible to preserve the purity of the vowels.

It is scarcely necessary to dwell on the importance of the clear articulation of the consonants, as all will agree that the first duty of the speaker is to make his audience hear what he says. To obtain a perfect articulation it is necessary to strengthen the muscles used, and this will take both time and patience.

Good articulation demands—

(*a*) The firm attack and sharp release of initial and final consonants;

(*b*) An easy transition from one articulation to another;

(*c*) That words must not be hurried over—not delivered in a confused mass, but separated clearly as if each were a thing of beauty in itself: neither lengthened nor shortened, neither swallowed nor forced;

(*d*) That drawling should be avoided as much as the rushing of words together.

5. To practise voice exercises.

Any exercise that strengthens the muscles of the tongue and lips should be practised.

(*a*) First practise all the consonants in conjunction with a vowel, exaggerating the contact and release of the necessary organs.

(*b*) Then read aloud a passage such as "The Cataract of Lodore," by Robert Southey, as slowly as possible, separating all the words and exaggerating the final consonants, taking care not to make one consonant do the work of two, as in the case of "and *d*ropping." The constant conscientious practice of such a selection will do more than anything to improve the articulation. It should be persisted in until the muscles are sufficiently strong to read it quickly and perfectly. When once this result has been attained the mechanism may be disregarded, and a natural easy delivery can soon be obtained, although carelessness must always be strenuously avoided.

6. To avoid bad habits and mannerisms.

When a natural voice production has been assured, and perfection in articulation has been attained, there are a number of bad habits and mannerisms that must be avoided.

(*a*) *Dropping the voice.*—Perhaps the most common failing is *the dropping of the voice at the ends of sentences.* This needs careful attention. The last words are frequently the most important part of a sentence; care must therefore be taken that they carry to the man at the back of the audience—he is the man to whom the speaker must direct his voice, and he is the man who will often embarrass the speaker by letting him know when he cannot hear. Realising the importance of this it is unfortunately a custom most prevalent amongst the

clergy to use an upward inflection on the last word of every sentence. An inflection is a gradual movement of the voice up or down. It differs from a musical interval in that the whole space between the two notes is covered by minute gradations of sound. When finality is to be expressed, or a plain statement of fact is to be made, a downward inflection is always the natural movement of the voice. A downward inflection should never entail "the dropping of the voice." By the term "dropping of the voice" we mean the depletion of tone or trailing off of voice, or when the voice is suddenly allowed to be confined in the throat.

It is only by means of a strong downward inflection that any finality or conviction can be conveyed, and when an upward inflection is substituted the statement immediately becomes interrogative or artificial. This custom, which, fortunately, is not as universal among the clergy as formerly, is responsible for that artificiality and lack of conviction which has come to be associated in the lay mind with the pulpit and lectern.

(*b*) *Monotony* in delivery is conducive to sleep in an audience, and is unfortunately very common among speakers of all kinds. It is by attention to a variety of causes that this can be remedied: first of all, a natural voice production, which we have already spoken of; then a natural delivery, which will ensure frequent changes of expression, pace, and emphasis.

(*c*) *Exhaustion of the lungs.*—In every speech care should be taken to keep the lungs constantly replenished with air —this will prevent words being rushed together. The lungs can be replenished at every phrase. A phrase is a group of words in a sentence expressing a complete idea. If a long sentence is broken up into a number of phrases it will be much easier for the audience to grasp its meaning, and the speaker will find that he unconsciously replenishes his lungs. This is of importance, as unless there is plenty of breath in the body no variety of tone can be obtained. A speaker should never be afraid of pauses. They answer

many useful purposes. They help to make the delivery sound natural. In a speech of great importance, if used with discretion, they will greatly help the emphasis. A pause before or after a word or phrase immediately doubles the emphasis. It is of great use to pause after an important sentence, thus letting it sink into the brains of the audience before calling their attention to other matter. The experienced speaker needs no reminder of the vital importance of pauses.

7. To cultivate and develop proper expression.

Expression must be determined by the individuality of the speaker, but the power of expression may be greatly increased by the mastery of the speaker over the subjects we are now considering. Expression should not be confined to the vocal organs, but the whole body must sympathise. The voice, the face, the arms, and the general attitude affect the delivery. The whole business of delivery should be one; everything should harmonise; the thought, the spirit, the language, the tones, and the action should all be of a piece. All exaggeration and mannerisms must be studiously avoided.

8. To speak slowly is a good general rule.

The variety of delivery will be greatly helped by attention given to pace. *It is a good and a safe rule to speak fairly slowly.* The tendency of many speakers is to rush. Such a method gives the audience very little chance of grasping the significance of the matter, and merely exhausts the speaker to no good purpose. Let the pace vary according to the matter in hand. Unimportant passages may be taken more quickly than passages of importance.

9. To vary the voice both in volume and pitch.

The volume and pitch of voice offer opportunities for variety. A quiet tone should be adopted for matters of solemnity and secrecy, and a louder tone for impassioned

utterances. Shouting must always be guarded against. With regard to the pitch of voice to be used when making a speech, a good rule to be observed is to start from the ordinary pitch of conversation—of course directing the voice to the man at the back of the audience. Many speakers deliberately pitch their voices high when addressing an audience, and the result is immediately disastrous to the naturalness of the delivery.

Any exercises that may be practised to increase the flexibility of voice are to be commended. The more flexible the voice the greater will be the power of expressing the more subtle shades of meaning. Relaxation of the muscles of the throat, and indeed of the whole body, is necessary to the complete control of the powers of speaking in public. It is a golden rule never to strain. Always keep control of mind and body. The nervous tension of any muscles is a sign of lack of control, and that lack of control will react on the grasp the speaker has of his matter in hand. To sum up briefly, the public speaker should acquire and develop—

(1) *Control and strength of voice*, by means of exercises to keep the relaxation of the muscles of the throat and the direction of the voice on to the hard palate; by breathing exercises which will increase his capacity for holding breath and will give him control over that breath.

(2) *A perfect articulation*, by means of exercises that will strengthen the articulatory muscles and render his speech clear and audible to all in his audience.

(3) *A natural delivery*, by the avoidance of mannerisms and an unnatural pitch of voice, and by attention to variety of tone, pace, and expression, and above all, the avoidance of the abominable habit of "elocuting" or exaggeration and the indulgence in theatricality. The speaker who endeavours to be theatrical invariably ends in being farcical.

CHAPTER XXII.

SOME PRACTICAL HINTS ON PUBLIC SPEAKING.

"SPEAKING does not consist in mere words; the effect produced on the mind by a piece of oratory *is a succession of images.* Men do not *hear* a great speech so much as they *see* and *feel* it. Hence it is that they weary of words which produce no images. . . . . To flatter well is an art and a gift which very few possess. It consists in the employment of language which does not itself directly flatter, but induces the hearers to flatter themselves. It is subtle and imperceptible as it is delightful and irresistible" (Harris). The art of speaking is the carrying of the hearers with the speaker in mind and sentiment.

The speaker should—

(1) Never begin before he is ready, and always finish when he has done;

(2) Be himself in speech and gesture, and not affect the mannerisms of others, which may make him appear ridiculous and ludicrous;

(3) Endeavour to be in sympathy with his audience; therefore, study its feelings, tastes, and prejudices;

(4) Get down to the level of his hearers, speak in their own language, grasp their mental outlook, and draw them up to his level;

(5) Belong for the time to the world of his hearers;

(6) Try to get his audience to believe that he is sincere; otherwise his speech will be ineffective;

(7) Speak to set in motion the minds of his audience, proceeding little by little from the ordinary to the extraordinary, from the part to the whole;

(8) Remember that his hearers want to know what he thinks. This they endeavour to discover by means of his words and gestures. If his words and gestures correspond with what they think he thinks, they are inclined to be persuaded; otherwise there is a suspicion that he is not speaking his mind;

(9) Avoid gestures or phrases which suggest the wrong train of thought; a pugnacious attitude is undesirable when the speaker wishes to be conciliatory;

(10) Comprehend (as a whole) and understand (in detail) the subject he is discussing;

(11) Remember that what to say depends upon the occasion and the audience; but simplicity and intensity should characterise what he has to say. Clear thinking helps plain speaking;

(12) Consider what he wants to say, the limits of his own knowledge, and how to say it to the best advantage: *i.e.* lucidly and cogently;

(13) Not apologise, as a rule, at the commencement of his speech, though it may be necessary at the end;

(14) Be deliberate, if constitutionally nervous; cautious, if naturally fluent;

(15) Avoid over-estimating the reception and effect of his remarks;

(16) Reflect that invective, abuse, and ridicule may annoy his supporters, but never convince an opponent; arguments might;

(17) Remember that the value of words is determined by emphasis, length, and modulation; and, in the service of words, sentences are for speakers, phrases for hearers;

(18) Direct his voice to the farthest part of the room, and be careful not to drop his voice at the end of a sentence;

(19) Never forget that clear enunciation, with careful use of the lips, is of more importance than a loud voice; that shouting exhausts the speaker, and is unpleasant and ineffective in reaching an audience;

(20) Always address the chair: *i.e.* look at the chairman rather than at the person to whom he is replying or attacking;

(21) Not forget in making a speech for the purpose of moving a resolution to "move" it: *i.e.* not to rise and speak and sit down without moving;

(22) Refer to previous speakers in the third person: *e.g.* I suggest that Mr. X has misunderstood my meaning; not, I suggest (and looking toward Mr. X) that *you* have misunderstood my meaning;

(23) Not reiterate his ideas, *i.e.* repeat himself, and thus weary the patience of the meeting;

(24) Speak to a motion either already moved or which he is going to move.

In fine, given a man who truly means what he says, and delivers it in good honest English, he will not lack hearers.

SOME DON'TS.

(The Right Hon. T. J. Macnamara in *The Book of Public Speaking.*)

1. Don't ever get a cheap laugh. Don't call an interrupter an ignoramus or a fool. Neither of these is precisely the soft answer that turneth away wrath.

2. Don't perorate; or, if you do, let it be short, simple, and unaffected. Remember the ridiculous is always on the heels of the sublime.

3. Don't forget you are not the chairman. It is he, and not you, who is responsible for the conduct of the meeting. Defer to him in everything.

4. Don't try to explain away an indiscretion by blaming the reporter.

5. Don't reply to a vote of thanks with more than "Thank you very much indeed." No matter how enthusiastic the audience may have been over your speech, it doesn't want another—just yet.

6. Don't lose your temper. Whatever befall keep smiling.

AN ORATOR'S GOLDEN RULES.

Sir John Sandys, the Public Orator for forty-three years of the University of Cambridge, says: "As to how to make a speech the matter can be compressed into a nutshell. Firstly:—

1. Never be prolix.

Secondly (and these maxims I cannot claim them as my own, for they originated with Martin Luther):

2. Stand up firmly.
3. Open your mouth boldly.
4. Leave off timely."

APPENDICES.

APPENDIX I.

NOTES AND DEFINITIONS OF TERMS.

Absence from Meetings for a period generally varying from six to twelve months often vacates the office held by a member of a statutory or other governing body. Special articles generally provide for this, but Table A contains no provision to this effect. Where the words used in such an article are "if he absents himself," this means "voluntarily," and does not include sickness.

Absence of Chairman.—If the person elected as chairman is not present at the appointed time of meeting, his place should be taken by the vice-chairman. If the vice-chairman is absent, some person present should be proposed and seconded and duly appointed to the chair.

Admission of Press depends upon standing orders or by-laws of statutory body, or articles in the case of a joint stock company. As regards meetings of local authorities the question of admission of the press is now governed mainly by The Admission of the Press to Meetings Act, 1908, although such admittance is not infrequently regulated by standing orders or resolutions.

Acceptance of Office.—In many statutory bodies or bodies governed by a scheme approved by an order in council or Government department, no member can act as such until he has signed a declaration of acceptance of office, and of willingness to act.

Acclamation.—When a motion is agreed to with such loud, eager expression of assent or approval that no dissenting voices are noticeable.

Adjournment.—The postponing or deferring the further proceedings of a meeting generally to another day; there may be an adjournment of the meeting itself or of the debate on any particular subject.

Agenda.—The items of business for consideration at a public meeting; the term is often applied to the agenda paper itself.

Agenda Paper.—The paper on which are arranged the items of business in a regular order which should as a rule be adhered to at a meeting.

Amendment.—A proposed alteration in the terms of a resolution submitted to a meeting for adoption; extended to a resolution proposed instead of or in opposition to another (Murray).

Ballot.—The method or system of secret voting; originally by means of small balls placed in an urn or box, hence applied to the ticket or paper so used (Murray).

Bankruptcy of a member of a statutory or other public body generally makes him incapable of retaining his seat.

Behaviour of Speaker.—A speaker should address his remarks to the chair, and except perhaps when in committee, remain standing whilst speaking. He should obey, as a rule, the ruling of the chairman, and remember that what he has to say depends upon the audience and the occasion. Offensive personal remarks, imputation of wrong motives, want of fairness, and a general lack of consideration toward those from whom he differs only serve to weaken his cause and tend to alienate the sympathies of his supporters. As a general rule a twenty minutes' speech from the average speaker is the limit of endurance of his audience.

By-laws.—Laws or ordinances dealing with matters of local or internal regulations made by a local authority, or by the members of a corporation or association.

Casting Vote.—The vote that turns the scale. A chairman has no casting or second vote at Common Law. This privilege can be conferred either by the articles of a joint stock company or by the by-laws, standing orders, or regulations which govern the meeting. The chairman is not bound to give his casting vote, but may adopt the practice of the House of Lords where, when an equality of votes is recorded, the motion is deemed to be not carried—*i.e.* in effect negatived.

"*Chuckers Out*" are persons engaged to expel disturbers or opponents from public meetings. Sons of Anak, with wrestling and boxing experience, are preferable for this work.

Clear Days.—"Four clear days" means days exclusive of the day of service and of meeting: *e.g.*, a meeting, four days' notice of which was issued on the 20th instant, could not be held before the 25th instant (Mercantile Co. *v.* International Co. of Mexico, 1893, 1 Ch. 484*n*; also see "Service by Post," p. 95 and 186).

Closure.—The closing of debate on a specific question in a legislative assembly or other deliberative body by vote of the house or by other competent authority. It is generally put in the form "That the question be now put," and it is applied when a motion has been reasonably discussed or discussed for a certain time. As a Parliamentary institution, it came into being in the Session of 1882. In 1880, the increasing length of debates and the development of obstruction in the House of Commons compelled it to seek a means of closing a discussion which, in its opinion, had been sufficiently debated. The rule now is that any member rising in his place may claim to move the closure after a question has been proposed. If the chair, *i.e.* the Speaker or Chairman, is of opinion that the motion is not an abuse of the rules of the House, nor an infringement of the rights of the minority, and that the question before the House has been sufficiently debated, it is put forthwith without

debate or amendment. On a division, it must be supported by at least one hundred members, to make it effective. Closure may be of one of three kinds—

(1) Ordinary closure as above;
(2) Guillotine closure, *post*, p. 182;
(3) Kangaroo closure, *post*, p. 182.

The Guillotine or Kangaroo closures in the House of Commons were originally understood to be limited strictly to rare occasions. In recent years they have been applied to all great measures, and have apparently become an ordinary part of the procedure of the House of Commons. In all probability, this drastic method of curtailing debate will be generally applied to every great Parliamentary measure, thus making debate more perfunctory. As a rule, no debate is allowed on the proposal to apply the closure.

Committee.—A body of persons appointed or elected by a society, corporation, or public meeting for some special business or function, with or without plenary powers. A committee may consist of one person. "A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body" (Cotton, L. J., in *re* The Taurine Co., 25 Ch. D., p. 118; see also *ante*, p. 21).

Computation of Time.—"In three clear days at the least"; the day of meeting must be excluded from the computation as well as the day of the notice.

Common Seal.—The seal of a corporation is a seal used by a corporation as the sign of their incorporation.

Control of Meeting.—When validly constituted a meeting is in the hands and control of the chairman.

Curator Bonis.—An officer appointed by the Court, on application to that effect, to take care of the property of persons who through minority or insanity are unable to manage or superintend it.

Days.—(See "Clear Days.")

Debate.—A formal discussion of some question of public interest in a legislative or other assembly (Murray).

Disqualification.—A person may be disqualified from being a member of a statutory body, *inter alia*, for absence from meetings, by bankruptcy or composition with creditors, by share or interest in contract or employment under that body, and by corrupt practices.

Division.—The separation of members of legislative and other deliberative bodies into two groups in order to count their votes. This is often effected by their passing into separate lobbies, the numbers on each side being counted by tellers (*q.v.*).

Dropped Motions.—Motions which have been abandoned or allowed to lapse; also applied to motions which have not been duly seconded.

Ejectment.—As a rule the chairman has the right to order the removal from a meeting of any disorderly members or persons.

En Bloc (Fr.).—In a mass; in a lump; altogether.

Forms of Proxy.—(See "Proxy," *post*, p. 227).

Guillotine—*i.e.* closure by compartments—is a method of limiting debate and accelerating business. By this closure certain periods of time are allotted by resolution of the House of Commons to the various portions and stages of a bill. At the expiration of each period of time, discussion, whether concluded or not, is closed and the majority carry that portion of the bill upon which the guillotine has fallen. The Speaker or Chairman has no discretion in refusing this form of closure. The guillotine is applied on occasions of great legislative importance under the pressure of shortness of session, and to overcome an obstinate resistance hardly distinguishable from obstruction (Redlich).

Hands.—Every question is generally, in the first instance, decided by a show of hands, which may be followed by a division or poll if demanded there and then.

Hour of Meeting refers to Greenwich time, except when *summer time* is in operation.

Intra Vires.—Within its powers, as opposed to *ultra vires* (*q.v.*).

Kangaroo refers to the method by which the chairman of committees in the House of Commons is at times empowered to select which amendments shall be discussed, and thus, in practice, the debate jumps from one selected amendment to another, all intervening ones being omitted. The chairman can declare that certain amendments are frivolous, and thus can take a big jump sometimes over a page of amendments until he reaches one which he considers worth considering. This power of jumping has suggested the name of kangaroo, and dates from a standing order of July, 1909.

Majority.—The greater number or part; a number which is more than half the whole number; the larger party voting together in any deliberative or legislative assembly. Where a certain number are incorporated, a major part of them may do any corporate act, though nothing be mentioned in the charter (Attorney-General *v.* Davy, 2 Atk. 412). Questions are generally decided by a simple majority, unless the statute or regulations require a larger proportion.

Meeting.—An assembly of people for any lawful purpose, or for the transaction of business of a common interest. "The word 'meeting' implies a concurrence or coming to face of at least two persons" (per Coleridge, C. J., Sharp *v.* Dawes, 46 L. J., Q. B. 104), so that, generally speaking, there can be no meeting of shareholders or other bodies if only one attend personally, even if that one hold the proxies of many others.

Meetings, Packing of.—The selection or making of any voting body in such a way as to secure a partial decision or promote some private or party ends.

Meeting, Public.—(1) Any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted (Law of Libel Amendment Act, 1888, 51 and 52 Vict., c. 64, s. 4).

(2) Any lawful meeting called for the furtherance or discussion of a matter of public concern, to which the public, or any particular section of the public, is invited or admitted, whether the admission thereto is general or restricted (Report of Home Office Committee, 1909).

Minutes.—A record in summary form of the proceedings at a meeting of a corporation, company, society, or committee. Minutes of meetings of shareholders may fairly be open to the inspection of members, but *not* minutes of board meetings, which should not be accessible to any but the directors, the secretary, and auditors, who are entitled to see them for the purpose of audit.

Month.—In every Act passed after 1850, means calendar month, unless the contrary appears (Section 3, Interpretation Act, 1889). When a calendar month's notice was required by the rules of a friendly society a lunar month's notice, even if reasonable, was held insufficient (Orton *v.* Bristow, 32 T. L. R. 129).

Motion.—A proposition or proposal formally made in a deliberative assembly (Murray). When a motion is once before the meeting it can, as a rule, only be withdrawn before a decision is taken thereon, with the consent of the members present. A motion, when proposed and seconded, becomes a resolution, and when put to the meeting is called "the question."

Negative.—Any merely negative alteration in a motion is not an amendment.

Nem. Diss. (nemine dissentiente), no one dissenting; without a dissenting voice.

Nem. Con. (nemine contradicente), without opposition or contradiction; no one speaking in opposition; without contradiction.

Next Business.—One of the methods of interrupting discussion upon an original question is the moving and seconding of the following motion:—"That the council do proceed to the next business."

One Man, one Vote.—Upon a show of hands, each person holding up his hand counts for one vote, though he may be entitled to more than one vote should there be division or poll.

Open Voting.—*i.e.*, voting in public as contrasted with ballot voting (*q.v.*).

Order.—Regular or customary mode of procedure at public meetings.

Order of Business.—(1) The order in which the business is to be transacted, generally as set out in the agenda, or the order prescribed in the notice convening the meeting. (2) The order in which the various matters should be dealt with at a meeting. Usually they are shown on the agenda, and are taken in the order in which they appear there, unless a resolution to vary the procedure is adopted.

Order of the Day.—The business set down for debate on a particular day.

Order, Points of, are questions raised with the view of calling attention to any departure from the prescribed or customary modes of proceeding in debates and discussion, or in the conduct of deliberative or legislative bodies and public meetings, and may be raised at any time without notice.

Point, the.—The precise matter in discussion or to be discussed.

Points of Order, which are to be addressed to the chairman and decided by him, may comprise any of the following:—

1. Use of improper, offensive, or irrelevant language.
2. Quorum not present.
3. Motion is *ultra vires;* or is not within the scope of the notice given.
4. No question before the meeting—*e.g.*, motion which has not been duly seconded; if so required by the articles.
5. Generally, any irregularity or informality of proceedings.

Poll (head).—At a meeting a counting of heads is sometimes effected by a show of hands; the voting at an election; the counting of votes; the numerical result of the voting; the action or time and place of voting. A poll is generally taken by a division or by ballot.

Postponement of a joint stock company meeting is not permissible unless there is an express provision to that effect in the articles. The proper course is to hold the meeting and adjourn it to another day.

Previous Question.—The question whether a vote should be taken on the main question or issue, moved before the main question is put. It is generally put in the form "That the question be not now put," which, if carried, gets rid of the original question. If the previous question is negatived, the main question must be put at once. It is suggested that this motion is so called because it is dealt with *previous* to the original question.

Privilege.—A right, advantage, or immunity granted to or enjoyed by a person, or a body or class of persons, beyond the common advantage of others (Murray).

Proxy.—A person appointed in the place of another to represent him; or the instrument by which a person is appointed so to act. "There is no Common Law right on the part of a member of a corporation to vote by proxy. His right to vote can arise only by contract, and this being so he must observe the terms of the contract. If, therefore, the articles require that a proxy shall be attested, an unattested proxy must be rejected" (Buckley).

Question.—A resolution which is put to the meeting for its decision thereon.

Quorum (L., lit of whom) from the wording of commissions in which certain persons were specially designated as members of a body, by the words *quorum vos . . . . unum* (*duos*, etc.), *esse volumus*, "of whom we will that you be one" (two, etc.), a fixed number of members of any body or society whose presence is necessary for the proper or valid transaction of business (Murray). Unless specially provided, persons represented by proxy cannot be counted as present in forming a quorum.

Requisition.—The action of formally calling upon some one to perform some action—*e.g.* calling a meeting; also a written demand of this nature.

Rescission of Motions.—It is generally provided that no resolution can be rescinded unless a certain notice has been given to the members of the body which passed it, from which it follows that a resolution cannot be rescinded at the same meeting at which it was passed. In the absence of such provision, it is undesirable that a resolution should be rescinded without proper notice.

Resolution.—A formal decision, determination, or expression of opinion on the part of a deliberative assembly or other meeting; a proposal of this nature submitted to an assembly or meeting (Murray); a proposition or motion which has been duly seconded. To avoid confusion and misapprehension, all resolutions should be in writing, and should commence with the word "That."

Rider.—An additional clause tacked on to a document after its first drafting, especially a supplementary and amending clause attached to a legislative bill on its final reading; a clause added as a corollary to a verdict.

Scrutineer.—One who examines the votes given at an election for the purpose of counting the poll.

Second Speech. As a rule each person (other than the mover) is allowed one speech upon each separate motion, but in committee this rule is not rigidly adhered to.

Seriatim.—In a series or order.

Service by Post.—Section 26 of Interpretation Act, 1889, provides that "where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." Articles sometimes provide that the day of posting the notice shall be considered the day of service.

Sine die.—Without (appointing) a day; indefinitely. A meeting adjourned *sine die* thus requires a fresh notice for the adjournment.

Speaking to Order.—Appealing to the chairman on points of order (*q. v.*), which may be done by a person forthwith even though he has spoken before, but the point must be taken at once without debate.

Standing Orders are rules and forms which regulate the procedure of deliberative or legislative bodies. In the Houses of Parliament, each has its own. Standing orders are of equal force in every parliament except so far as they are altered or suspended from time to time. They are also rules which local authorities make for the regulating of their proceedings and business, and are permanent regulations which cannot be varied or abrogated without notice of definite character, *e.g.* six months. Any member may direct attention to a breach of them. Usually some provision is made for the suspension of standing orders for urgent or special purposes.

Status quo.—The existing state of things at a given time or date.

Sub-committee is a body of persons appointed by a committee for certain specific purposes. Its report must be presented to the appointing committee.

Teller.—One who tells or counts votes; one of two or more persons, members of a deliberative or legislative body, appointed when a division takes place, to count the votes cast for and against a particular proposal or measure; in the House of Commons there are two tellers appointed for each party.

Time.—Unless otherwise stated, where any expression of time occurs in any act, deed, or document, the time in Great Britain refers to Greenwich mean time (Definition of Time Act, 43 & 44 Vict. c. 9).

Unan., unanimously; *una voce*, with one voice: unanimously.

Ultra vires (beyond their powers).—A company is said to act *ultra vires* when it exceeds the authority imparted to it by its memorandum of association or Act of Parliament.

Votes.—A shareholder's vote is a right of property which he may use as he pleases. The propriety or impropriety of his motive is immaterial (Jessel, M. R., in Pender *v.* Lushington, 1877, 7 Ch. D. at p. 75). "There is no obligation on a shareholder of a company to give his vote merely with a view to what other persons may consider the interest of the company at large. He has a right, if he thinks fit, to give his vote from motives or promptings of what he considers his own individual interests." In Burns *v.* Siemens Bros. 1919, 1 Ch. 225, where articles provided the first of the joint holder of shares only could vote, it was held that in order to enable them effectively to exercise their voting powers they were entitled to have their holding split into two joint holdings, with their names in different orders (see also p. 140). A majority of members will not be allowed by vote to commit a fraud on the minority (Menier *v.* Hooper's Telegraph Co., 1874, 9 Ch. 350). Directors are usually forbidden by the articles to vote as directors on contracts in which they are interested, but may vote as shareholders (see East Pant du United Lead Mining Co. *v.* Merryweather, *ante*, p. 140). Even where the articles allow directors to enter into contracts with their companies the Stock Exchange requires that they should not be allowed to vote upon matters in which they are interested.

Woman.—A single or married woman can be elected chairman if properly qualified.

APPENDIX II.

LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908.

[8 Edw. VII., Ch. 43.]

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities.

[21st December, 1908.

1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

2. For the purposes of this Act the expression "local authority" means—

(*a*) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of The Local Government Act, 1894;

(*b*) An education committee and a joint education committee, established under Section Seventeen of The Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(*c*) A board of guardians, and a joint committee constituted in pursuance of Section Eight of The Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;

(*d*) A central body and a distress committee under The Unemployed Workmen Act, 1905;

(*e*) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(*f*) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

6. In the application of this Act to Scotland—

(1) The expression "local authority" means—

(*a*) A county council, a town council, a parish council, a school board, and a district committee constituted under The Local Government (Scotland) Acts;

(*b*) A central body, and a distress committee under The Unemployed Workmen Act, 1905;

(*c*) Any other local body, board, joint board, or committee which has or may hereafter have the power to impose a rate as defined in Section Two of this Act and which does not require to report its proceedings to any other local authority:

(2) The definition of the expression "local authority" in Section Two of this Act, shall not apply to Scotland.

7. (1) This Act may be cited as "The Local Authorities (Admission of the Press to Meetings) Act, 1908."

(2) This Act shall not extend to Ireland.

APPENDIX III.

PUBLIC MEETINGS ACT, 1908.

[8 Edw. VII., Ch. 66.]

An Act to prevent disturbance at Public Meetings.

1. *Penalty on endeavour to break up Public Meeting.*

(1) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a Member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

2. Any person who incites others to commit an offence under this section shall be guilty of a like offence.

The fact that a public meeting is held upon a highway does not necessarily make the meeting unlawful. Whether it is unlawful or not depends upon the circumstances in which it is held, *e.g.*, whether or not an obstruction is caused. "The parties had no right to assume that simply because the meeting was held on a highway it could be interrupted notwithstanding the provisions of The Public Meeting Act, 1908" (per Lord Alverstone, C. J., in Burden *v.* Rigler, 1 K. B. 1911, p. 340).

The Metropolitan Police view of the Act was stated in May, 1913, as follows: The Public Meetings Act gives no additional power and imposes no additional duties on the police, but it makes the deliberate interruption of public meetings an offence cognisable by the law. The view taken by the police is that they are not required to take any initiative under the Act, and are not empowered to arrest interrupters. It is not their business to secure a hearing for speakers. It is for the speakers to get on such good terms with their audience that they can secure a hearing for themselves. The police ought not to interfere except to prevent a breach of the peace, and it may and must often happen that an act constituting a breach of the peace may not be done within sight of a police officer, or if done in his sight it may not be in his power to arrest the particular wrongdoer.

APPENDIX IV.

PRACTICE OF THE POLICE WITH REGARD TO KEEPING ORDER INSIDE PUBLIC MEETINGS.

The Report of the Departmental Committee on the Duties of the Police with Respect to the Preservation of Order at Public Meetings (1909) states—

I. In the Metropolis, Liverpool, Bristol, and other large towns, and in most of the county forces (about sixty-nine in all, or more than one third of the total number of forces), the police are not allowed to enter political meetings at all, except in the case of a breach of the peace.

The following are illustrations of the general instructions given to the police on duty at public meetings in these places:—

Metropolitan Police District.—Police on duty at the entrances of or in the streets near to public buildings where a meeting is held are to regulate traffic and prevent obstruction of the thoroughfares.

They are not to enter or interfere within the building unless called upon to suppress actual breach of the peace, or to take into custody any person charged by another with committing an offence of which the police can take legal cognizance.

Liverpool.—As to the inside, the preservation of order is a matter for the managers and promoters of the meeting; how far they have a right to secure freedom from interruption by forcibly ejecting interrupters is a question which does not concern the police, but the one thing certain is that it is no business of the police to keep the people quiet or to put out those who interrupt.

The police are not to go inside any building where there is a public meeting unless a breach of the peace is imminent or has taken place. If it has taken place, so long as no felonious assault has been committed, all they have to do is to give the parties each others' names and addresses and let them take their own remedies, whether they complain that they have been disturbed and assaulted, or that force has been used to put them out as disturbers. If the breach of peace has not taken place but is imminent, all they must do is to do their best to prevent it; but they must not eject or help to eject anybody unless matters are so bad that it is necessary to disperse the meeting by clearing the place altogether.

II. On the other hand, in Manchester, Cardiff, and the majority of borough forces (about ninety-one in all, or about one half of the total forces), the police are allowed to attend inside political (as well as other public) meetings on the application of the promoters and at their charge. In these cases the members of the force so attending as a rule get "special duty pay," sometimes even if their presence at the meeting falls within their ordinary hours of duty.

The *Manchester* practice is described as follows: Police officers are sent to preserve order at political or other public meetings when a request is made in writing by the promoters of the meeting. The promoters state the number of men required inside the building and the number of men asked for is then sent. They are stationed inside the room where the meeting is held. Payment is made for their services according to a scale adopted by the Watch Committee, and the men are either in uniform or plain clothes according to the desire of the persons who make application for their services. Besides this, in cases where disorder is anticipated at meetings, one or two constables in plain clothes are instructed to enter the building to take observations, whilst a number of officers in uniform patrol the neighbourhood outside in order to deal with any emergency that may arise. These men are always in charge of a superior officer, and have instructions not to enter the building unless requested to do so by the chairman or other responsible persons. In such cases the men are not paid for by the promoters. The general instructions to constables hired inside the building are that they must only act on the directions of the chairman or some responsible person, and must not eject persons unless a breach of the peace is imminent. The stewards must eject, and the police must see that no breach of the peace is committed while this is being done. Constables on duty at meetings are instructed to exercise a careful discretion and judgment, and a superior officer is always in charge of the men, who has a large discretion. The police do sometimes eject on their own initiative. As a matter of practice the police act merely as the servants of the conveners of the meeting. All meetings are protected, if the police are asked for. Payment is required, so that the police may not be called on too frequently. Constables are not called from their ordinary duty, but it is done in their own time. They receive eightpence an hour 'special duty pay,' and twopence an hour goes to the Superannuation Fund, or to an insurance fund. Policemen, are, however, sent to many meetings without any payment whatever, when a disturbance is likely, for the protection of the public and to maintain order and see fair play."

III. The third practice prevails in *Birmingham*, and in a small number of other forces, where it is stated that the police attend inside at political (and sometimes at other public) meetings in the

ordinary course of duty—*i.e.* with or without application from, but without charge to the promoters. Apparently, however, this practice is usually confined to those meetings where serious disorder or breach of the peace is apprehended.

The practice at *Birmingham* is thus described by the chief constable:—

"As a rule, the organisers of indoor meetings, when they consider they require the police, approach the chief constable for their attendance, and police are sent there under the control of their own officers. The organisers are told to make their own arrangements as to stewarding and preserving order, and that the police will assist them, if assistance is necessary. When there is likely to be immediate necessity for their help, the police are put inside, in view of the public, in the public part of the building; when it is not likely they are put in rooms inside the building apart. The same practice is followed at non-political as at political meetings. Since 1901 the police have not been paid for. If there is a disturbance the stewards act, and the police support them and assist if there is resistance. If disturbance is anticipated, the police approach the conveners, even if no application is made. Police are not supplied to prevent interruptions, but to prevent disturbance.

"The departmental committee indicated their 'preference for the policy of non-interference in ordinary political meetings, although on exceptional occasions it may become necessary or advisable to station police inside a meeting for the purpose of maintaining order . . . . We do not think there is any substantial evidence of a growing tendency to break up public meetings to an extent which would justify any serious departure from the existing practice. We believe that the right of public meetings will be best safeguarded in the future, as at present, by leaving the responsible police authorities of each locality to determine the practice most suitable to the very varying circumstances with which they have to deal, and with which they have, on the whole, successfully dealt with in the past.'"

APPENDIX V.

FREE SPEECH AND BLASPHEMY.

Mr. Justice Fitzjames Stephen in 1882 wrote: "To say that the crime of blasphemy lies in the manner and not in the matter appears to me to be an attempt to evade or explain away a law which has no doubt ceased to be in harmony with the temper of the times. It is unquestionably true that in the course of the last thirty—but especially in the course of the last twenty years open avowals of disbelief in the truth of both natural and revealed religion have become so common that they have ceased to attract attention. I do not think anyone has been convicted of blasphemy in modern times for a mere decent expression of disbelief in Christianity."—*Law Times*, 29th November, 1913.

"I have no doubt, therefore, that the mere denial of the truth of Christianity is not enough to constitute the offence of blasphemy. It is my duty to lay down the law on the subject as I find it laid down in the best books of authority, and in *Starkie on Libel* (599, 4th edition) it is there laid down as, I believe, correctly: 'There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinion for the benefit of others. When learned and acute men enter upon these discussions with such laudable motives their very controversies, even where one of the antagonists must necessarily be mistaken, must in general tend to the advancement of truth, and the establishment of religion on the firmest and most stable foundation. The very absurdity and folly of an ignorant man who professes to teach and enlighten the rest of mankind are usually so gross as to render his errors harmless; but, be this as it may, the law interferes not with his blunders, so long as they are honest ones, justly considering that society is more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and truth from the exertions of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others by means of

licentious and contumelious abuse applied to sacred objects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong.' . . . . If the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy" (Coleridge, C. J., in Reg. *v.* Ramsey and Foote, 1883, 15 Cox C. C., p. 236).

"A man was free to think, to say, and to teach that which he pleased about religious matters, though not about morals. But when they came to consider whether he had exceeded the permitted limits they must not forget the place where he spoke and the people to whom he spoke. A man was not free in a public place, where passers-by, who did not go willingly to listen to him, knowing what he was going to say, should accidentally hear his words; or where young people might be present, a man was not free in such a place to use coarse ridicule on subjects which were sacred to the great majority of persons in this country. He was free to put forward arguments. The jury must draw the line, and probably would draw it in favour of the man accused if he was really arguing for a honest belief in a doctrine or non-doctrine to which he was attached, and he would not be convicted of blasphemous libel; but if not for argument, he was making a coarse and scurrilous attack on doctrines which the majority of people held to be true, in a public place, where passers-by might have their ears offended, and where young people might come, he would render himself amenable to the law of blasphemous libel. Such language might also tend to provoke a breach of the peace" (Phillimore, J., in Rex *v.* Boulter, *Times*, 7th February, 1908).

In Rex *v.* Stewart (Leeds Assizes, 5th December, 1911), Horridge, J., followed the two foregoing cases, and in his summing up to the jury stated that the law of blasphemy had altered considerably of recent years. People were now allowed entire freedom of thought and expression so long as the expression was given vent to in what might be termed a decent way. It must not, however, be an abusive, malicious attack upon things which were sacred to a large majority of the people, delivered in a public place where such people would be passing. They must not be thin-skinned, because they must recollect that people might have perfectly honestly, vulgar ideas, and a very vulgar way of expressing themselves. They might also be addressing vulgar people, and they might want to put it into a language which would be understood by such people. They had nothing whatever to do with the question of whether it was wise or not to prosecute for blasphemy.

In Rex *v.* Stewart (Staffordshire Assizes, 17th and 18th November, 1913), Coleridge, J., in the course of his summing up to the jury, said that the difficulty in cases of that kind is that all ancient precedents have, to a large extent, been abrogated by the course of time. There have been prosecutions for blasphemy in the old days which we in our day should recognise as infractions of the liberty of speech. But we have got wiser, larger minded, and more tolerant as the ages have rolled on, and our view nowadays is inclined to the opinion that free discussion will elicit the truth, and that anything that cannot stand free discussion is not worth protecting by Act of Parliament or law from such free discussion. It was a curious thing that one might attack any other religion, such as Mohammedanism or Judaism in the most blasphemous language, and the law would hold them harmless, but in regard to Christianity the law was difficult. Even now, however, one might in speech or in writing attack the very fundamentals of the Christian faith without by so doing offending against any Christian law. The honest expression of opinion cannot now be touched by the criminal law. There is nothing sacred from honest discussion—Christianity, the Monarchy, sexual relations—everything may be openly discussed and without crime if you keep within the limits of what is blasphemous and indecent. There was only one limit to this absolute freedom of discussion of the fundamentals of Christianity, and it was this: the religious feelings of all classes must be protected against outrage and insult. A man might suffer from almost insane vanity and from almost incurable vulgarity, added his Lordship; but if he sets out to criticise with the honest intention of arriving at the truth he is not to be condemned merely because his language is that of a vainglorious person and coarse and vulgar. The test is, Was it language used in honest discussion; although coarse and vulgar, was it used in honest discussion of the fundamentals of Christianity, or was it used to outrage and insult and ridicule the feelings of others—to scandalise, and not to prove false the doctrine he was discussing? There was a great difference between impugning the truths and doctrines of a religion and offending by coarse mockery the feelings of those who upheld those doctrines.

In Rex *v.* Gott (Birmingham Assizes, 11th and 14th July, 1917), Shearman, J., said that nobody nowadays wanted to limit the freedom of belief, and a man was free to express in words and teach his belief so long as he did so decently and not in a way intended to shock or insult believers.

APPENDIX VI.

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

RAILWAYS and other important companies which want to acquire or interfere with private property compulsorily, or to commit acts amounting to nuisances, must be incorporated by special Act of Parliament. Many of these companies are governed in part by the Act of 1845, which, *inter alia*, contains the following provisions relating to the procedure and conduct of their meetings, unless otherwise varied by their own special Acts.

GENERAL MEETINGS.

Ordinary meetings to be half-yearly.

66. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings"; and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

Business at ordinary meetings.

67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Extraordinary meetings.

68. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting"; and such meetings may be convened by the directors at such times as they think fit.

Business at extraordinary meetings.

69. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Extraordinary meetings may be required by shareholders.

70. It shall be lawful for the prescribed number of shareholders holding in the aggregate shares to the prescribed amount, or where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual place of abode; and forthwith, upon the receipt of such requisition, the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders qualified as aforesaid, may call such meeting by giving fourteen days' public notice thereof.

Notice of meetings.

71. Fourteen days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special Act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

Quorum for a general meeting.

72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum; and if no quorum be prescribed, then shareholders holding in the aggregate not less than one twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one twentieth of the capital of the company, shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present, no business shall be transacted at the meeting other than the declaring of a dividend, in case that shall be one of the objects of the meeting; but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

Chairman at general meetings.

73. At every meeting of the company one or other of the following persons shall preside as chairman: that is to say, the

chairman of the directors, or in his absence the deputy chairman, if any, or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting; or in the absence of the chairman and the deputy chairman, and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Business at meetings and adjournments.

74. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Votes of shareholders.

75. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first one hundred shares: Provided always that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Manner of voting.

76. The votes may be given either personally or by proxies, being shareholders, authorised by writing according to the form in the Schedule (F) to this Act, or in a form to the like effect, under the hand of the shareholders nominating such proxy, or, if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

[Provided that where the shareholder is a member of a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company (Section 2 of Companies Clauses Consolidation Act, 1888, 51 & 52 Vict. c. 48).]

Regulations as to proxies.

77. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy has been transmitted to the

secretary of the company within the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Votes of joint shareholders.

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of lunatics and minors &c.

79. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a particular majority of votes only required in the event of a poll being demanded.

80. Whenever in this or the special Act the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorising such proceeding has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient authority for such proceeding without proof of the number or proportion of votes recorded in favour of or against the same.

APPOINTMENT AND ROTATION OF DIRECTORS.

Number of directors.

81. The number of directors shall be the prescribed number.

Power to vary number of directors.

82. Where the company shall be authorised by the special Act to increase or to reduce the number of directors it shall be lawful for the company from time to time, in general meeting, after due notice for that purpose, to increase or to reduce the number of directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors.

83. The directors appointed by the special Act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special Act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special Act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

84. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting, no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Qualification of directors.

85. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

Cases in which office of director shall become vacant.

86. If any of the directors at any time subsequently to his election accept or continue to hold any office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director

at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Shareholder of company not disqualified by reason of contracts.

87. Provided always that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act; but no director being a shareholder or member of such joint stock company shall vote on any question as to any contract with such joint stock company.

Rotation of directors.

88. The directors appointed by the special Act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they otherwise agree: that is to say—

At the end of the first year after the first election of directors, the prescribed number, and if no number be prescribed, one third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office.

At the end of the second year the prescribed number, and if no number be prescribed, one half of the remaining number of such directors, to be determined in like manner, shall go out of office.

At the end of the third year the prescribed number, and if no number be prescribed, the remainder of such directors, shall go out of office.

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless, every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of occasional vacancies in office of directors.

89. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

PROCEEDINGS OF DIRECTORS.

Meetings of directors.

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper from time to time and from place to place, and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one third of the directors; and all questions at any such meetings shall be determined by the majority of votes of the directors present, and in case of equal division of votes, the chairman shall have a casting vote in addition to his vote as one of the directors.

Permanent chairman of directors.

93. At the first meeting of the directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also if they think fit choose another director to act as deputy-chairman for the same period, and if the chairman or deputy-chairman die, or resign, or cease to be a director or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional chairman of directors.

94. If at any meeting of the directors neither the chairman nor deputy-chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

Committee of directors. Powers of committee.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit within the prescribed limits, if any, and they may grant to such committees, respectively, power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

96. The said committee may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

Proceedings to be entered in a book, and to be evidence.

98. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for that purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders, or directors, or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

APPENDIX VII.

THE COMPANIES (CONSOLIDATION) ACT, 1908 (TABLE A).

The regulations contained in the First Schedule (known as Table A) apply only to those companies registered under the Companies Acts which have no special articles of their own dealing with the same matters. Most companies of any importance do, however, provide themselves with special articles—founded in the main upon Table A, but permitting of very considerable alterations in details; so that for all such companies the special articles must be consulted, and Table A can only be regarded as a probable guide to the regulations by which such companies are controlled (see Section 11, p. 215).

TABLE A:

REGULATIONS AS TO MEETINGS AND ARRANGEMENTS OF A COMPANY LIMITED BY SHARES.

General meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of The Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings

shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of The Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at general meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company, but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, *curator*

bonis, or other person in the nature of a committee or *curator bonis* appointed by that court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

COMPANY, LIMITED.

"I, of , in the County of , being a member of the COMPANY, LIMITED, hereby appoint , of , as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof."

Signed this day of .

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the Memorandum of Association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of The Companies (Consolidation) Act, 1908.

Powers and duties of directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these Articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any charges therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) Of all appointments of officers made by the directors;

(*b*) Of the names of the directors present at each meeting of the directors and of any committee of the directors.

(*c*) Of all resolutions and proceedings at all meetings of the company, and of the directors and of committees of directors.

And every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of directors.

77. The office of director shall be vacated, if the director—

(*a*) Ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or

(*b*) Holds any other office of profit under the company except that of managing director or manager; or

(*c*) Becomes bankrupt; or

(*d*) Is found lunatic or becomes of unsound mind; or

(*e*) Is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place; and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees, consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves, which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by Statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notice of general meetings.

ARTICLES OF ASSOCIATION.

Application of Table A.

1.—Section 11 of the Act of 1908: ". . . . If articles are not registered, or if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A . . . . those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles."

2. The articles are the source of authority for all matters dealing with meetings, save only that where the articles are silent, common law rules prevail if Table A is expressly excluded. Articles may modify, supersede, or even abrogate common law rules.

APPENDIX VIII.

FORMS OF NOTICES OF MEETINGS, AGENDA PAPERS, AND MINUTES.

By R. A. Hudson, F.C.I.S.

Notices of board meetings.

Clause 87 of Table A, and the Articles of most companies, provide that "the directors may meet together for the dispatch of business, adjourn, and *otherwise regulate their meetings as they think fit.*"

This leaves it, of course, open to the directors to instruct the secretary from time to time as to their wishes in the matter of notices; or to *Resolve* –as is often done—that meetings of the board are to be held at regular intervals, "of which no notice shall be given."

Apart from such special instructions, the usual practice is to send a simple notice in the following form without specifying the business to be transacted:—

John Jones & Company, Limited.

370 Lombard Street, E.C.,
12th July, 192 .

Sir,

I beg to give you notice that a meeting of the directors will be held at the registered office of the company on next, the day of , at a.m.

Andrew Armstrong,
Secretary.

, Esq.

If the directors have given instructions that when any special business is to be brought up for consideration, a brief intimation of its nature is to be included in the notice, an addendum to the foregoing would take this form:—

"Business to be transacted:—

"General business, and the proposed purchase of further premises in Street, N.E."

But speaking generally, and seeing that it is the duty of the directors to attend the meetings of the board, it is not necessary to burden the notice with the full contents of the agenda.

Agenda of board meeting

Held on , 192 , at the company's registered office.

AGENDA.	CHAIRMAN'S NOTES.
Present	*A. B. in the chair.* *C. D.* *E. F.* *G. H.* *directors.*
In attendance	*M. N., solicitor of the company.*
Read Minutes of last meeting	*Read and signed.*
Submit Bank Pass Book, with adjustment account to agree same with cash book ... And statement of ways and means.	*Examined, and secretary instructed to request bank to transfer £500 from deposit to current account.*
Report Cheques (if any) signed since last meeting	*Approved.*
Produce List of Accounts for payment, and submit cheques in payment of same for signature	*All except P. T.'s account approved and cheques signed.* *Secretary to write to P. T. respecting shortage of delivery.*
Submit Transfer Deeds, Nos. to	*Passed for registration. Certificates ordered to be signed and sealed.*
Seal Certificates Nos. to , in place of Certificates Nos. cancelled... ...	*Cancelled certificates examined. New certificates signed and sealed.*
Allot 1000 Ordinary Shares applied for by the following:— 700 to of 300 to of	*Allotted, and secretary ordered to send notice of allotment forthwith.*

[The foregoing and any kindred formal matters are generally disposed of *first*, so as to leave time for any special matters to be discussed fully and without interruption.]

Consider Report of Managing Director [*or* of committee, *or* sub-committee, *as the case may be*]	*Proposed engagement of Mr. L. K. at a salary of £200 per annum, and the erection of a new storage shed as recommended. Approved.*
Examine Trading Account and cost and work details ...	*Examined: Reduction in cost of 2 per cent. noted.*
Read Letter from A. Z., dated 192 .	*Secretary instructed to reply that*

AGENDA—*continued.*	CHAIRMAN'S NOTES.
Consider Draft Report to be submitted to general meeting.	*Approved. Secretary instructed to have this printed and sent with notice of general meeting for the inst., at 3 p.m.*
Fix date of general meeting ...	
Next meeting	*inst., at 11 a.m.*

[It is, of course, impossible to enumerate the many special questions that may arise for consideration; but in constructing agenda it is, as stated above, the approved plan to arrange for taking the formal business first.]

Minutes of board meeting.

The "notes" of the chairman appended to the foregoing agenda will, when recorded in minutes, appear in the following form:—

At a meeting of the board of directors of THE COMPANY, LIMITED, held at the registered offices of the company on , the day of , 192 .

Present—Mr. A. B. in the chair.
,, C. D.
,, E. F.
,, G. H. *directors.*

And in attendance on the board—
Mr. M. N., the company's solicitor.

The minutes for the board meeting held on ult., were read and verified, and ordered to be signed.

The bank pass book was compared with the cash book, showing, with adjustments, available cash balance of £ .

A further statement of ways and means was produced showing—

Accounts falling due and payable by the company within the next month, £ .	Falling due and payable to the company, within the next month, £ .

The secretary was directed to request the bankers to transfer £500 from deposit account to current account.

Details of cheques drawn since last meeting were submitted and approved.

Lists of accounts due for payment, with their corresponding vouchers, were submitted, and cheques for all these, except the account of P. T. & Co., were signed.

The secretary was instructed to write to P. T. & Co. respecting an alleged shortage of delivery in their last consignment.

Transfer deeds, numbered to inclusive, as appearing in the transfer register, were submitted and passed by the board. It was resolved that the transferees be entered in the register of members and that certificates for the shares transferred be signed and sealed.

Share certificates, Nos. for shares, were thereupon *Cancelled* by the board and new certificates for shares, Nos. to , were signed and sealed.

Applications received from—

Mr. , of , for 700 Ordinary Shares
Mr. , of , „ 300 „ „

were submitted and approved, and it was *Resolved* that the shares applied for be allotted, and that the secretary be instructed to send to the applicants notice of allotment forthwith.

The report of the managing director was read, and the engagement of Mr. L. K. at a salary of £200 per annum, and also the erection of a new storage shed at a cost not to exceed £ as recommended, were approved.

"Trading account" and "cost and work details" to date were examined, and a reduction of 2 per cent. in the cost of production noted by the board.

A letter, dated , from A. Z., with reference to was read, and the secretary was instructed to reply that.....

A draft notice convening the annual general meeting, together with a draft report of directors, were *Considered* and, with some alterations approved, and ordered to be printed and sent to the shareholders, the date of the meeting being fixed for 3 p.m., on the inst., at .

The next meeting of the board was fixed for the inst., at 11 a.m., at the registered office, and the secretary was instructed to have proofs of the report and notice of general meeting ready for the use of the board by that date.

Notice of statutory meeting.

370 Lombard Street, London, E.C.
, 192 .

THE COMPANY, LIMITED.

NOTICE IS HEREBY GIVEN that in accordance with the provisions of Section 65 of The Companies (Consolidation) Act, 1908, the statutory meeting of this company will be held at on the day of , 192 , at two o'clock in the afternoon.

A copy of the report required to be sent to the members by the above-named section accompanies this notice.

By order of the board,

ANDREW ARMSTRONG,
Secretary.

Agenda of statutory meeting.

[As the contents of the report to be presented to the shareholders seven days before the statutory meeting are fully set out in Section 65 of The Companies (Consolidation) Act, 1908, and cover the whole ground, the agenda of such a meeting is very simple:—]

THE COMPANY, LIMITED.

First general [*or* statutory] meeting, held at , on , 192 , at o'clock.

	CHAIRMAN'S NOTES.
[**Read* notice convening the meeting] ...	*Read.*
Ask the meeting whether the statutory report may be taken as read, or whether it shall be read	*Taken as read.*
Chairman to direct the attention of the meeting to the fact that a list of the shareholders in the company is, in accordance with Section 65 of the Act, open to the inspection of members during the continuance of the meeting	*List produced and shown.*
Chairman to make short statement of the company's position and prospects, supplementing to some extent the statutory report, and invite inquiries from members who do not understand any of the contents of the report.	*Statement made.*

* See, however, *ante*, p. 115.

After the chairman has answered such questions to the best of his ability, the members are at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not; but no resolution of which notice has not been given in accordance with the articles may be passed; or the meeting may adjourn from time to time.

When such discussion has ceased, if no adjournment has been determined upon by the meeting, the chairman will *declare* the meeting closed.

Minutes of statutory meeting.

Reproduced in minutes the foregoing will appear as follows:—

At the first general [*or* statutory] meeting of THE COMPANY, LIMITED, held at , on .

Present— in the chair.

Shareholders:

[*The notice convening the meeting was read]; the statutory report being, with the consent of the meeting, taken as read.

The chairman directed the attention of the meeting to the fact that a list of the shareholders in the company was, in accordance with the provisions of the Act, placed on the table and would remain open to the inspection of members during the continuance of the meeting.

The chairman then made a short statement on the company's position and prospects, supplementing to some extent the information contained in the statutory report, and invited inquiries from those members who had any difficulty in understanding the report.

After answering all the questions addressed to him, a discussion arose respecting the formation of the company, in which members A and B and C took part, on the conclusion of which—as there was no business to transact—the meeting closed, with a vote of thanks to the chairman.

*See, however, *ante*, p. 115.

Notices of annual or ordinary general meetings.

[As the annual general meeting is an "ordinary" meeting it is generally described in the notice as the "second" or "third"—as the case may be—ordinary general meeting of the company.]

THE COMPANY, LIMITED.

Street, London, E.C.

..... 192 .

NOTICE IS HEREBY GIVEN that the [second] ordinary general meeting of this company will be held at , on , the day of , 192 , at two o'clock in the afternoon, for the following purposes:—

To receive and consider the report of the directors, the annual statement of accounts and balance sheet, and the auditor's report thereon.

To declare dividends and to transact the other ordinary business of the company.

Notice is also hereby given that the transfer books of the company will be closed from the to the , 192 , both days inclusive.

By order of the board,

Secretary.

As the shareholders are under no duty to attend meetings it is, of course, necessary to indicate the nature of the business to be transacted, and no "*special*" *business*, *i.e.* business not specified in the Articles as that which may be transacted at an ordinary meeting (see Clause 50 of Table A) can be legally transacted at an ordinary meeting without special notice. When, therefore, it is desired to transact any other business at an ordinary meeting (to save calling the shareholders together again), the notice must also contain the words "And to transact the following special business: viz.—"

Agenda for ordinary general meeting.

THE COMPANY, LIMITED.

[Second] ordinary general meeting, to be held at , on 192 , at o'clock.

AGENDA.	CHAIRMAN'S NOTES.
[**Read* notice convening the meeting] ...	*Read.*
Read report of auditors	*Read.*
Ask the meeting whether the directors' report and the accounts as submitted and printed shall be read or taken as read	*Taken as read.*

* See, however, *ante*, p. 115.

[Generally, the minutes of the last general meeting will have been read and signed at the next succeeding board meeting, so that it is not necessary to read them at a general meeting and thus delay the proceedings for that purpose. The auditors' report, on the other hand, *must be read* at the general meeting at which the balance sheet is submitted, and be open to inspection by any shareholder (Section 113 of The Companies (Consolidation) Act, 1908)].

AGENDA—*continued.*	CHAIRMAN'S NOTES.
Chairman to make statement of the company's position and general prospects, and	*Statement made.*
Move that the report and accounts as audited and certified, now before the meeting, be approved and adopted	*Moved.*
Call on to second the motion	*Seconded by*
Ascertain whether the shareholders have any points to discuss or questions to ask, arising out of this motion ...	*Discussion and questions asked.*
Reply to any questions	*Questions answered.*
Put the motion to the meeting and declare the result.	*Put and carried unanimously.*
Elect a director in place of Mr. W., retiring by rotation	*Proposed by Mr. A.; seconded by Mr. B. Mr. W. re-elected.*
Move that the dividends recommended by the directors in their report, viz. 6 per cent. on the preference shares and 7½ per cent. on the ordinary shares, be approved and paid to shareholders appearing on the register of members at the closing of the books on inst.	*Seconded by Mr. C. Carried.*
Invite a shareholder to move that Messrs. R. and Son, chartered accountants, be re-elected as auditors of the company at a remuneration of £	*Moved by Mr. M.; seconded by Mr. N. Carried.*
Declare proceedings at an end	

Minutes for ordinary general meeting.

At the [second] ordinary general meeting of THE COMPANY, LIMITED, held at on

Present— in the chair.

Shareholders:

[*The notice convening the meeting] and the auditors' report were *Read*. The directors' report and accounts were, with the consent of the meeting, taken as read.

After the chairman had addressed the meeting and replied to all the questions addressed to him, it was, on the motion of the chairman, seconded by Mr. , unanimously *Resolved* "that the report and accounts to , 192 , as audited and certified by the company's auditors, be approved and adopted."

On the proposition of Mr. A., seconded by Mr. B., it was *Resolved* that Mr. W., the director retiring by rotation, be re-elected.

It was then on the motion of the chairman, seconded by Mr. C., unanimously *Resolved* that the dividends recommended by the directors in their annual report, viz. 6 per cent. on the preference shares and 7½ per cent. on the ordinary shares be approved, and that the dividends be paid to those members whose names appeared in the register of members at the date of closing the books on inst.

It was proposed by Mr. M., seconded by Mr. N., and *Resolved* that Messrs. R. & Son, chartered accountants, be re-elected as the auditors of the company at a remuneration of £ per annum.

The meeting then terminated with a vote of thanks to the board.

(Signed),

.....

Chairman.

Notice of extraordinary general meeting.

An extraordinary meeting is, of course, held for the purpose of transacting some special business of which full notice must be given. The object *may be* to pass an ordinary resolution, but very frequently it is to pass an extraordinary resolution or to confirm such a resolution as a special resolution.

---

*See, however, *ante*, p. 115.

THE COMPANY, LIMITED.

..... Street, London, E.C.

.....192 .

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of this company will be held at , on , the day of , 192 , at o'clock, for the purpose of considering and, if thought fit, of passing as an [ordinary / extraordinary] resolution* the following resolution, either with or without modification:—

"That ,"

[*The wording of the actual resolution will generally be drafted by the company's solicitor.*]

[Should the above resolution, or any modification thereof, be passed by the requisite majority, it will be submitted for confirmation as a special resolution to a second extraordinary general meeting which will be duly convened.]

By order of the board,

.....
Secretary.

Notice of an extraordinary general meeting to confirm a special resolution will read thus:—

THE COMPANY, LIMITED.

. . . Street, E.C.

..... 192 .

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of this company will be held at , on , the day of , 192 , when the following resolution, which was passed at the extraordinary general meeting of the company held on July, 192 , will be submitted for confirmation as a special resolution:—

"That ....."

By order of the board.

.....
Secretary.

* See *ante*, p. 128.

Agenda of extraordinary general meeting.

THE COMPANY, LIMITED.

Extraordinary general meeting to be held at on , 192 , at o'clock.

AGENDA.	CHAIRMAN'S NOTES.
[*Read* notice convening the meeting] ...	*Read.*
Chairman to make statement as to the circumstances which have arisen rendering it advisable for the company to pass the following resolution	*Statement made.*
Moved "That ... ...

arisen rendering it advisable for the company to pass the resolution, of which notice had been given, and

Moved "That

. . . . . ."

This was seconded by Mr. , and after the chairman had replied to a number of questions on the subject addressed to him, it was put to the meeting and unanimously carried without [*or* with the following] amendment.

The proceedings then terminated.

Notice of an ordinary and an extraordinary general meeting to be held on the same date.

Occasionally, to avoid calling the shareholders together with unnecessary frequency, a notice will be given of two meetings on the same day.

The latter part of such a notice will then read—

"And notice is hereby also given that at the same place and on the same day, at o'clock in the afternoon, or so soon afterwards as the [ordinary / extraordinary] general meeting shall be concluded, [an extraordinary / the sixth ordinary] general meeting of the company will be held for the purpose of" *&c.*

By order of the board,

Secretary.

Form of proxy.

THE EVENING STAR COMPANY, LIMITED.

I, John Beavan Welson, of 116 Chancery Lane, London, W.C., in the county of London, being a member of THE EVENING STAR COMPANY, LIMITED, hereby appoint [or failing him , or failing him], as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the 7th day of September, 1920, and at any adjournment thereof.

As witness my hand this 2nd day of August, 1920.

Signed by the said in the presence of Walte Powell, Clerk, of 1 Essex Court, Temple, E.C.

APPENDIX IX.

TEST QUESTIONS ON THE CONDUCT OF AND PROCEDURE AT PUBLIC AND COMPANY MEETINGS.

Chairman.

1. What are the chief powers and duties of a chairman of a meeting? (1904, 1906, 1908, 1909, and 1911).*

2. Several persons are proposed for the office of chairman at a meeting of creditors. What should be the procedure?

3. Can a chairman close a meeting against its will? If he leaves the chair what can be done? Can a majority compel a chairman to adjourn a meeting?

4. What is usually done in the case of the chairman's absence from a board meeting? Can he sign the minutes in confirmation at the next meeting?

5. If the chairman and the vice-chairman of a limited company are absent from (*a*) a board meeting, (*b*) a general meeting, what course should be adopted as to electing a chairman?

6. What rights has the chairman of a meeting at Common Law in regard to (*a*) adjournment of meeting, (*b*) casting vote? How and when, if at all, can such rights be modified?

7. What are the duties of a chairman as enunciated in National Dwellings Society *v.* Sykes?

8. What qualifications should an ideal chairman possess?

9. A chairman, in reporting to his company's ordinary annual general meeting the dismissal of a mine manager, passes severe criticism on the conduct of the latter. In what circumstances (if any) can privilege be successfully pleaded as against an action for slander? (1912).*

Conduct of Debate.

10. Draft a rule as to how a speaker should behave.

11. What is meant by "speaking to order?" Give examples and who decides the same.

12. Explain what is meant by the rule of "no second speech." Are there any exceptions?

13. What is meant by "the closure"? (1906 and 1907).*

14. Explain what is meant by the "previous question" and state its form and effect (1906).*

15. Explain the meaning of "question" and "privilege."

* Questions set at previous examinations of the Chartered Institute of Secretaries.

16. In the course of discussion on a resolution it is moved by one of those present as an amendment to insert the word "not" in the resolution, so as wholly to negative the original proposal. The chairman consults you as to the course he should adopt. How would you advise him? (1912).*

17. In what circumstances may (1) the mover of the original question, (2) one who has already spoken on the question, address the meeting a second time? (1912).*

18. What do you understand by the following?:—

(*a*) That the question be now put.

(*b*) That the meeting be adjourned *sine die*.

(*c*) To move the previous question.

(*d*) To receive a report.

(*e*) To carry a resolution *nem. con.* (1909).*

19. What is an "amendment?" Discuss the chief kinds, and the rules applicable, especially so far as procedure at a meeting is concerned (1904, 1909).*

20. Assuming that an amendment has been carried which supersedes the original motion, what follows?

21. A shareholder moves an amendment that the dividend recommended by the directors be increased and this motion is seconded. What should the chairman do?

22. State your views as to rescinding a motion.

23. Name five modes of interrupting discussion upon an original motion (1905).*

24. What amendments are in order to the following resolution:—"that the accounts and report be adopted"?

25. Explain "amendment," "previous question," "closure," and "privilege" (1910).*

26. What is meant by "privilege" in regard to a meeting and utterances thereat? If a chairman in speaking at a specially convened meeting of the members of a limited company utters slanders, can an action be brought against him? If the words are true, will this be a defence? (1911).*

27. The articles of a company contain no regulations as to giving notices of amendments to resolutions. Would it be competent to a meeting to vote on an amendment of which no notice has been given? Consider the case with reference to both ordinary and special resolutions (1911).*

28. Explain the meaning of (1) "amendment"; (2) "closure"; (3) "the previous question." Describe the correct procedure as regards bringing forward and submitting an amendment (1912).*

*Questions set at previous examinations of the Chartered Institute of Secretaries.

29. Explain "privilege," "previous question," "closure," "open voting," "ballot" (1914).*

Maintenance of Order.

30. Explain the meaning of "order."

31. Assuming that the police be present at a meeting when the chairman orders the removal of a disorderly person, what is their duty with regard to the matter? (1905).*

32. Deal with the following: Persistent disturbance at a meeting (1910).*

33. What are the chief rules as to order? (1910).*

34. What are the rights as to expelling anyone from a meeting who is disturbing it? (1908).*

35. What are "points of order," "order of business"?

36. What steps can the chairman of a public meeting take to enforce order? Give any instances from your own knowledge.

37. State the provisions of The Public Meetings Act, 1908.

38. A meeting is disorderly and getting out of hand. State briefly—

(*a*) Some causes of disorder.

(*b*) How such disorder might be prevented.

(*c*) What the chairman should do if the meeting is beyond his control.

39. What are the chief rules for the orderly conduct of meetings and the duties of a chairman? (1914).*

Meetings.

40. Can one person constitute a meeting? (1905).*

41. What is a quorum? (1906).*

42. Explain briefly the procedure at a meeting (public or shareholders') and the powers of the chairman (1909).*

43. Comment on the following: "Directors cannot think without meeting."

44. What is the rule in Foss *v.* Harbottle?

45. Can a meeting be commenced before a quorum is present in the hope that some additional member will put in an appearance before the meeting is over?

46. Explain the meaning of "packing of meetings." What are the chief rules to be borne in mind in arranging for the conduct of a meeting?

47. Explain adjournments (1906).*

* Questions at previous examinations of the Chartered Institute of Secretaries.

48. What is the meaning of "privileged" in respect of public meetings in press reports? Give illustrations, and discuss any cases with which you may be acquainted (1908).*

49. Can any question of "privilege" arise at political or social meetings; and, if not, why not? (1906).*

50. Discuss briefly the question of "privilege" in regard to speeches at meetings. (Cite and quote authorities.)

51. State concisely the differences between a committee, a sub-committee, and a meeting.

52. Give some particulars as to how the procedure of a committee differs from that of a meeting of the parent body.

53. Distinguish between ordinary and special business at a public meeting. What kind of business may be transacted at an extra-ordinary general meeting?

54. Explain the preparation, use, and fate of agenda papers.

55. Define "public meeting," and make a concise statement of the law with reference thereto.

56. What arrangements should be made in organising a public meeting?

57. State what you know as to the statutory regulations with regard to the holding of meetings by county councils and borough councils, or by joint stock companies or other public bodies (1907).*

58. How can an extraordinary general meeting of a limited company be convened? What steps should be taken by members wishing to do so?

59. The directors of a general meeting desire to postpone a duly convened general meeting. Comment upon such a step.

60. Explain briefly the procedure at a meeting (public or company) (1909).*

61. Explain the committee system by means of which the directors of a company or the council of a public body subdivide and control their work (1909).*

62. Explain the committee system as in use in a large company or in public bodies. How are the powers of a committee derived or circumscribed? (1910).*

63. What are standing orders? Whose duty is it to call attention to infringements? Suppose a committee infringes standing orders, what must be done? (1910).*

64. What are the advantages and disadvantages of the committee system of carrying on the work of a company or public body? What points should be kept in mind in forming committees? Name a few typical committees (1910).*

* Questions set at previous examinations of the Chartered Institute of Secretaries.

65. How is the principle of delegation usually exercised by directors? Refer to any articles in Table A dealing with this subject (1911).*

66. Distinguish between ordinary and extraordinary meetings, referring especially to the business capable of being transacted at either. When can and must they be held? (1911).*

67. What are the chief points distinguishing a public meeting from any other meeting? And what are the chief rules governing expulsion from either? (1911).*

68. What are the provisions concerning the first statutory meeting of a company? (1911).*

69. Enumerate the chief notices to be given under the Company's Act, and state how such notices must be given to members (1911).*

70. Suppose a meeting fails to keep a quorum, what is the effect on subsequent proceedings?

71. What different kinds of meetings can there be in connection with public companies? Who are entitled to vote thereat? Draft a proxy form (1910).*

72. Summarise the regulations as laid down in Table A for proceedings at general meetings (1910).*

73. Deal with the following matters—

(*a*) An adjourned meeting and the business thereat;

(*b*) An adjourned meeting and proxies (1910).*

74. What meetings must be held by a company, and what notice of such meetings must be given? (1910).*

75. Distinguish between a "meeting" and a "committee" as regards the number of persons that must necessarily be present at each (1912).*

76. How does a "statutory" meeting differ from (say) the meeting of a political party as regards—

(1) The method of convening;

(2) The right to be present;

(3) The power to eject without assigning reason? (1912).*

77. You are instructed to convene an extraordinary general meeting of your company for the purpose of passing an extraordinary resolution for winding up. Enumerate carefully the precautions you would take to ensure that the meeting was validly convened. Draft the notice (1912).*

78A. Define a special resolution and an extraordinary resolution. Mention any cases in which a special resolution is necessary (1912).*

78B. What are the usual regulations for the general meeting of a company? Refer especially to notice, quorum, agenda, and general procedure thereof (1913).*

* Questions set at previous examinations of the Chartered Institute of Secretaries.

79A. What are the regulations for an adjourned meeting of a company and the business thereat? (1913).*

79B. What is an extraordinary meeting? Why is such a meeting held? Explain the usual procedure in connection with such a meeting (1913).*

80. What general meetings must a going company hold, and when? (1913).*

81. You are instructed to convene an extraordinary general meeting of your company for the purpose of passing a special resolution for winding up. What precautions should you take to ensure that the meeting is validly convened? Draft the notice (1913).*

82. Define (1) an extraordinary resolution; (2) a special resolution. Mention two cases in which each is necessary.*

83. What do you know about the statutory meeting of a private company? (1914).*

84. Define (1) "extraordinary resolution"; (2) "special resolution." Draft the notice convening a meeting for the purpose of passing an extraordinary resolution for winding up voluntarily (1914).*

85. What is a committee of shareholders? Why and how is it usually constituted? What should be the relations to it of the directors and officials of the company? (1914).*

86. What will be the duties of a secretary on receiving requisition for a general meeting? (1914).*

87. What are the chief differences between a public meeting and a shareholders' meeting? Refer especially to convening, conduct, and expulsion (1914).*

Minutes.

88. Give your views as to when minutes of (*a*) general and (*b*) board meetings should be read and confirmed, and by whom they should be signed.

89. What is the liability of directors in reference to minutes?

90. What is the liability of directors in regard to the confirmation of minutes of a meeting at which they were not present?

91. What is the presumption failing minutes?

92. Distinguish between a "report" and "minutes" of a meeting.

93. State what you know of the law relating to minutes as enunciated in *re* Indian Zoedone Co.; Tothill's Case; and *re* Pyle Works.

94. Are minutes conclusive evidence of the proceedings at meetings? State authority for your answer.

95. How and when are minutes confirmed?

96. What should minutes contain, and how are they prepared?

*Questions set at previous examinations of the Chartered Institute of Secretaries.

97. What is the law relating to minutes as stated in Southampton Dock Co. *v.* Richards; *re* Cawley & Co.; and *re* Liverpool Household Stores?

98. What does The Companies (Consolidation) Act, 1908, enact in regard to minutes?

Voting and its Methods.

99. What is meant by open voting, and voting by ballot? (1909).*

100. What is meant by a "casting vote," and how is it exercised?

101. Define "poll."

102. What is meant by "putting motions to the vote," and what are the chief rules as to voting, or ways in which voting may take place?

103. Give a form of proxy, and state its use.

104. State the law in reference to proxies. (Cite or quote authorities.)

105. Explain the course of procedure you would adopt on a poll being demanded at a general meeting of a company. By what are the voting powers of the members governed?

106. What is a "division"?

107. What is the law relating to a poll? (Cite or quote authorities.)

108. Deal with the following points as to putting motions to the vote: Form of putting; show of hands; who should count? tellers; chairman's vote; demand for a poll; proxies (1909).*

109. What are the chief regulations for the voting of members of a company as set forth in Table A?

110. What right (if any) have members of a body corporate to be represented or to vote by proxy at meetings thereof? Can proxies be counted in order to make up a quorum? If so, when? (1912).*

111. What are the usual regulations for voting at any meeting? Discuss the following special cases: (*a*) Vote of joint shareholders; (*b*) shareholder of unsound mind; (*c*) limited company as a shareholder; (*d*) shareholder with unpaid calls (1913).*

112. What are the usual provisions as to voting at meetings which are to be found in a company's articles? (1913).*

General.

113. Draft a rule as to how a speaker should behave (1904).*

114. Distinguish between statutory report, annual report, committee reports, and write a short annual report (1909).*

115. Explain briefly the following terms: Acceptance of office, closure, clear days, *curator bonis*, division, minutes.

Questions set at previous examinations of the Chartered Institute of Secretaries.

116. State shortly what you know of the law relating to notice of a meeting. (Cite or quote authorities.)

117. Give the provisions of The Local Authorities (Admission of the Press) Act 1908.

118. Differentiate between the cases of (*a*) Sharp *v.* Dawes; (*b*) *re* The Taurine Co.; (*c*) East *v.* Bennett Bros.

119. What do you know about the closure, open voting, voting by ballot, the previous question, privilege (1911).*

120. What are proxies? Draft the form of one. What are the chief rules to be observed in use of proxies (1911).*

121. Is notice of an adjourned meeting necessary? If not, why not?

122. Is it necessary to read the notice convening a meeting at its commencement?

123. State briefly the leading principles relating to procedure at meetings enunciated or established in Somerville *v.* Hawkins; Wall *v.* London and Northern Assets Corporation; and Torbock *v.* Westbury.

124. What does The Companies (Consolidation) Act, 1908, enact with reference to—

(1) Convening of extraordinary general meetings on requisition;

(2) Minutes of proceedings?

125. Explain briefly "ballot," "points of order," "previous question," "proxy," "rescission of motions," and "quorum."

126. State shortly the case of Mayor of Tenby *v.* Mason, and the legislation which followed therefrom.

127. What principles affecting procedure at meetings were enunciated in Wooding *v.* Oxley; Henderson *v.* Bank of Australia; and Campbell *v.* Maund?

128. Give some hints on public speaking.

129. State what you know of the practice of the police in regard to keeping order at public meetings.

130. State briefly the principles with regard to public meetings enunciated or established in Wood *v.* Leadbitter; Warr & Co. *v.* London County Council; and Royal Aquarium *v.* Parkinson.

131. What companies are governed by The Companies Clauses Consolidation Act, 1845? and give the substance of the clauses therein relating to—

(*a*) Quorum for general meeting;

(*b*) Minutes.

* Questions set at previous examinations of the Chartered Institute of Secretaries.

132. On what occasions should the Press be excluded from a meeting?

133. What is the law relating to notice of a meeting?

134. State what you know of the law relating to meetings as enunciated in Stoughton *v.* Reynolds; R. *v.* Langhorne; and Allen *v.* Gold Reefs of West Africa.

135. State the substance of The Companies (Consolidation) Act, 1908, with regard to—

(*a*) Extraordinary general meetings;
(*b*) Appointment and remuneration of auditors;
(*c*) Special resolutions.

136. State the substance of the clauses of Table A in reference to—

(1) Special business.
(2) Election of chairman and notice thereof.
(3) Votes of members.

137. What principles relating to meetings were enunciated in (*a*) Normandy *v.* Ind, Coope & Co.; (*b*) *re* The British Provident &c. Assurance Co.

138. State shortly the principles affecting meetings enunciated in Burden *v.* Rigler; Park *v.* Lawton; Betts *v.* Macnaghten.

139. What are the "guillotine" and "kangaroo" closures?

140. State shortly the law relating to free speech and blasphemy.

141. May proxies be used at adjourned meetings?

142. Prepare an agenda paper, consisting of six items, for a board meeting (1912).*

143. What principles relating to meetings were laid down in Barron *v.* Potter, Blair Open Hearth Furnace Co. *v.* Reigart, and Fruit and Vegetable Growers *v.* Kekewich?

144. What are the powers of majorities?

145. What is the law relating to votes of directors in matters in which they are personally interested?

146. State shortly what are the powers of a company in general meeting.

147. State shortly the principles affecting meetings in Gardner *v.* Iredale; Hirst *v.* Picture Palaces; and *re* Penarth Pontoon Co.

148. What are the powers of the directors and members *inter se*?

149. State exactly what is meant by "the holders of not less than one tenth of the issued share capital of a company."

150. What principles relating to meetings were laid down in Shaw *v.* Tati Concessions; *re* Thomas; and Anglo-American Oil Co. *v.* Martin.

* Questions set at previous examinations of the Chartered Institute of Secretaries.

QUESTIONS SET IN DECEMBER, 1914.

151. What are the duties of a secretary in regard to the convening and preparation for and conduct of a company meeting? *

152. What is an amendment to a resolution? What are the chief rules as to putting or otherwise dealing with such amendments, and as to speeches thereon? *

153. What are the regulations for an adjourned meeting of a company and the business thereat? What is the best evidence of any decisions arrived at by any meeting? *

154. Explain carefully privilege and motions, "that the question be now put" and "the previous question." *

155. State shortly the effect of the ordinary provisions of articles of association as to voting at general meetings. *

156. When must notice of shareholders' meetings be given, and what information must each notice contain of the business to be transacted? What is the result of a defective notice? *

JUNE, 1915.

157. What is the meaning of "privilege" as used in reference to the proceedings at a public or company meeting? Explain and illustrate the meaning especially in respect of the latter meeting. *

158. What precautions should be taken against disorder at a meeting? And what are the powers of the chairman and organisers if it occurs? *

159. Explain –Amendments, adjournments, previous question, next business, and closure. *

160. What should be recorded in minutes? How are they confirmed? Are entries in a minute book evidence? If alterations in a minute book are required, what should be done? *

DECEMBER 1915.

161. Explain the meaning of privileged and non-privileged meetings and statements, and give instances. * (Also June, 1916.)

DECEMBER 1916.

162. Explain the committee system for carrying on the work of a company or public body, and discuss its advantages and disadvantages *

* Questions set at previous examinations of the Chartered Institute of Secretaries.

163. Summarize the chief rules as to the calling of company meetings, and voting thereat, as found in any ordinary Articles of Association or in Table A of the Companies Acts.*

164. What are minutes, and their uses in legal or other proceedings? By whom should they be signed?*

165. Explain fully, with instances, the meaning of "privilege" as used in connection with speeches, letters, and legal proceedings.*

166. What are the chief duties and powers of the chairman and secretary respectively at a company meeting? Discuss the question fully, *e.g.*, preparation for the meeting, conduct of persons at the meeting, whether orderly or disorderly, etc.*

JUNE, 1917.

167. What are the rules respecting—
(*a*) Voting by poll?
(*b*) Committee of inspection?
(*c*) Use of proxies?
(*d*) Adjournment of meetings?*

DECEMBER, 1917.

168. Describe the procedure at a company's meeting—
(*a*) When several amendments are moved to a motion;
(*b*) When a poll is demanded;
(*c*) When the motion to adopt the directors' report and the accounts is defeated.*

169. What is an extraordinary resolution, and what is it used for?*

170. What are the rules governing proxies? In what circumstances is a proxy valid for an adjourned meeting?*

MISCELLANEOUS QUESTIONS SET IN 1918–1919.

171. A company has four directors, and three are a quorum. Two directors refuse to attend meetings, and the other two directors instruct the secretary to convene a general meeting of the company. Discuss the duty of the secretary to convene the meeting and the validity of the proceedings thereat.*

172. Enumerate the cases in which for the validity of proceedings the Act of 1908 requires a special resolution to be passed.*

* Questions set at previous examinations of the Chartered Institute of Secretaries.

173. At an extraordinary general meeting convened on a shareholder's requisition one member alone attended in person, and is the bearer of a large number of proxies. The meeting is adjourned to the same day in the next week at the same time and place, and at the adjourned meeting the same member again puts in an appearance with the same proxies as before, no member being present in person. Discuss the position, and state how it would be affected if the meeting had been called by the directors.*

174. What kind of resolution is required for—

(*a*) Winding up a solvent company voluntarily?

(*b*) Increasing the company's capital?

Draft a specimen of each.*

175. What are the usual methods of obtaining the sense of a meeting? What right have members of a company to demand a poll at any meeting of which an extraordinary resolution is submitted to be passed, or a special resolution is submitted to be passed or confirmed? Describe a mode of taking a poll.*

176. Explain briefly the following terms: "casting vote," "clear days," "previous question," "proxy," "quorum," "standing orders," "committee."*

177. What different kinds of resolutions are there in company practice? State what you know of each.*

178. Give the purport of the section of The Companies (Consolidation) Act, 1908, relating to the minutes of proceedings of meetings of directors. May minutes under any circumstances be altered by striking out anything or adding anything?*

179. Discuss the question of privilege in speeches at public meetings.*

CHARTERED INSTITUTE OF SECRETARIES.

FINAL EXAMINATION—DECEMBER, 1918.

Time allowed—Two Hours.

† LAW AND CONDUCT OF AND PROCEDURE AT MEETINGS.

Not more than SIX *questions to be attempted; of which* THREE *must be in Section A and* THREE *in either Section B or Section C.*

A.

180. What are the powers of the conveners of a meeting as regards (*a*) admission, (*b*) expulsion, (*c*) maintenance of order? What is the Public Meetings Act, 1908?

* Questions set at previous examinations of the Chartered Institute of Secretaries.
† This is now a separate subject for the final examination.

181. Define privilege and explain how far speakers at assemblies of various kinds can claim its benefit?

182. Explain fully the importance of notices of meetings generally and the consequences of any omission or defect. What are the essentials of a notice?

183. What alternative methods are there of terminating a debate on a particular matter? Describe precisely the procedure in each case.

B.

184. What are the various kinds of meetings held by a company; and what are the conditions attaching to each as to notice, quorum, business transacted, and voting?

185. Write the minutes of a company's board meeting.

186. What are the rules governing the use of proxies? Discuss their use at adjourned meetings.

187. What courses are open to shareholders who are dissatisfied with the report and accounts submitted to them in general meeting?

C.

188. What is the law and practice regarding the admission to local authorities' meetings of (*a*) the public, (*b*) the press? Does the question rest on statute law?

189. To what extent are the constitution and procedure of municipal meetings governed by the Local Government Acts? How else is the procedure determined?

190. What is the quorum for a borough council meeting? Is it always the same whatever the business to be transacted? May a councillor be counted in the quorum though disqualified from discussing and voting.

191. Explain precisely the procedure at municipal meetings in dealing with business for which there is a standing committee.

FINAL EXAMINATION—JUNE, 1919.

Time allowed—Two Hours.

LAW AND CONDUCT OF AND PROCEDURE AT MEETINGS.

Not more than SIX *questions to be attempted, of which* THREE *must be in Section A and* THREE *in either Section B or Section C.*

A.

192. Discuss the powers of a chairman of a public meeting in relation to—

(*a*) maintenance of order;
(*b*) adjournment of meetings;
(*c*) casting vote.

193. What rules should be observed at a meeting to avoid confusion in debate, and to expedite business?

194. State briefly the law as to expulsion from meetings.

195. What are dilatory motions? Give illustrations. May the chairman put a termination to the speeches of persons desirous of addressing a meeting?

196. Explain "amendment," "quorum," "privileged communication," "privileged occasion."

B.

197. What are the rules in regard to notices convening meetings of shareholders which should be borne in mind by the convening authority

198. The chairman at an annual general meeting moves "That the report and accounts be adopted." Which (if any) of the following amendments would be in order? Give reasons for your decisions.

(1) "That the report and accounts be received, but not adopted."

(2) "That a committee of shareholders be appointed to investigate the affairs of the company."

(3) "That the report and accounts be adopted save as to the recommendation in the report that the company should purchase from the Government the factory at Wolverhampton."

199. Draft the notice convening a meeting to pass an extraordinary resolution for winding up a company.

200. How may companies be represented at meetings of other companies of which they are members?

C.

201. What advantages are there in the committee system for facilitating the work of public bodies? Draft the agenda of a finance committee.

202. What was decided in The Mayor, etc., of Tenby *v.* Mason? How was the effect of this decision modified by The Local Authorities' (Admission of the Press to Meetings) Act, 1908?

203. What are dealt with in standing orders? How may standing orders be suspended in special circumstances?

204. By whom may meetings of borough councils be convened? What length of notice must be given? What quorum is necessary.

MISCELLANEOUS QUESTIONS SET IN 1919–20.

(Intermediate Questions Marked I. All Others are Final Questions.)

205. Describe the duties and functions of a chairman of a public meeting.*

206. Comment on—

(*a*) The rights of a minority at general meetings of shareholders; or

(*b*) Admission of Press to meetings of local authorities.*

207. Discuss—

(*a*) Voting by poll;

(*b*) Proxies;

(*c*) Amendments;

(*d*) Notices of meetings.*

208 I. What powers has the chairman of a public meeting in regard to—

(*a*) Maintenance of order?

(*b*) Adjournment of meetings?

(*c*) Casting vote?*

209 I. Describe in detail the procedure in connection with the passing of an extraordinary resolution and of a special resolution.*

210 I. State briefly what you know about amendments, minutes, previous question, poll, proxies, and power of attorney.*

211 I. Mention several kinds of amendments and state rules relating to amendments.*

212 I. Explain briefly: Agenda, memorandum of association, casting vote, adjournment, previous question, proxy, rotation of directors, special resolution, demand for a poll, and committee of inspection.*

213 I. What is an extraordinary resolution and how exactly is it passed? How does it differ from a special resolution?*

214 I. Mention various ways in which discussion on an original motion may be interrupted.*

215 I. Explain briefly: Quorum, poll, closure, casting vote, and special business.*

* Questions set at previous examinations of the Chartered Institute of Secretaries.

216. What are the rules for meetings in relation to—

(*a*) Motions;

(*b*) Speakers;

(*c*) Decision of questions.*

217 I. How is voting conducted at a general meeting of a company? On a show of hands is a member holding a proxy for an absent member entitled to one or more votes?*

CHARTERED INSTITUTE OF SECRETARIES.

Final Examination.

OCTOBER, 1919.

Two hours.

Not more than six questions to be attempted, of which three must be in Section A and three in either Section B or Section C.

A.

218. What are the points to be kept in mind by conveners of meetings in regard to notices? What may be the result of want of notices or insufficient notice?

219. Describe the duties and functions of a chairman at a public meeting.

220. State briefly the principles relating to meetings laid down in any two of the following cases:—

Rex *v.* Langhorne.
National Dwellings Society *v.* Sykes.
Somerville *v.* Hawkins.
Wood *v.* Leadbitter.
Warr & Co. *v.* London County Council.
Royal Aquarium *v.* Parkinson.

221. Describe the procedure in debate when several amendments are moved to the motion under discussion.

222. Comment on the following:—

Dilatory motion, guillotine closure, *nem. diss.*, quorum. *nem. con.*, points of order, previous question, rescission of motions.

* Questions set at previous examinations of the Chartered Institute of Secretaries.

B.

223. Define extraordinary resolution and special resolution. Mention three purposes for which a special resolution and two for which an extraordinary resolution is required by the Companies Act, 1908.

224. Discuss the following:—

(*a*) The limitation of the powers of a majority at general meetings of shareholders;

(*b*) Adjournment of a meeting;

(*c*) Postponement of a meeting.

225. Who has the right to demand a poll at a general meeting of shareholders? What provision does the Companies Act, 1908, contain relating to the demand for a poll for special and extraordinary resolutions?

226. Draft a form of proxy. What are the rules governing the use of proxies? Would a proxy lodged after the date of the original meeting but before the adjournment be valid?

C.

227. Discuss in relation to the proceedings of borough councils—

(*a*) Convening of meetings;

(*b*) Duties of chairman;

(*c*) Quorum of meetings.

228. State briefly the provisions of The Local Authorities (Admission of the Press to Meetings) Act, 1908.

229. Prepare an agenda paper consisting of six items for a meeting of a local authority.

230. What matters are usually dealt with in standing orders of committees appointed by a public body?

DECEMBER, 1919.

Not more than six questions to be attempted, of which three must be in Section A and three in either Section B or Section C.

A.

231. In what way should the election of a chairman be conducted at a meeting where there is a difference of opinion as to who should occupy the chair?

232. Outline the procedure for putting motions and amendments to the vote.

233. Comment on the following motions:—

"That the meeting be adjourned."

"That the meeting proceed to the next business."

"Previous question."

234. State briefly the provisions of The Public Meetings Act, 1908.

B.

235. What provisions does Table A of the Companies Act, 1908, make as to the rights of a bearer of a share warrant to exercise the privileges of a member at any meeting?

236. Give the substance of the provisions of the Companies Act respecting the statutory meeting.

237. What notice before the annual general meeting should be given in order to comply with the Companies Act, 1908, of the intention to nominate a person other than a retiring auditor to the office of auditor?

238. State the requirements of The Companies Clauses Consolidation Act, 1845, in regard to notice of meetings.

239. What is a special resolution? Mention matters for which an extraordinary resolution is required by the Companies Act.

C.

240. State the provisions of The Municipal Corporations Act, 1882, in regard to quorum of meetings of city and borough councils.

241. What persons are eligible for the office of a chairman of a—

(*a*) County council?

(*b*) District council?

(*c*) Parish council?

242. Give the substance of standing orders relating to "Order of Business" of any public body with whose procedure at meetings you are conversant.

243. What is the definition of local authority in The Local Authorities (Admission of the Press to Meetings) Act, 1908?

MARCH, 1920.

Not more than six questions to be attempted, of which three must be in Section A and three in either Section B or Section C.

A.

244. Give a short summary of the decisions in any two of the following cases:—

Wood *v.* Leadbitter.
Somerville *v.* Hawkins.
National Dwellings Society *v.* Sykes (1894).
Royal Aquarium Society *v.* Parkinson (1892).
Wall *v.* London & North Western Assets Corporation (1898).

245. Are the conveners of public meetings bound to concede an opportunity of speaking to any person present who dissents from their views? May the chairman compel the dissentient person to withdraw from the meeting?

246. What are the powers of the chairman of a meeting? If the person announced to take the chair comes in late, after the meeting has elected some other person to take the chair, need the elected chairman vacate the chair?

247. Describe the procedure for dealing with amendments. Has a mover of the previous question the right of reply? May the previous question be moved during the discussion of an amendment?

B.

248. A shareholder at a meeting of shareholders convened by himself makes defamatory statements about a director of a company, the matter being one of great interest and importance to the shareholders. Reporters are present. Discuss the question whether the speech would be excused as "a privileged communication."

249. State four rules for procedure at general meetings laid down by Table A of The Companies (Consolidation) Act, 1908.

250. Discuss the principal rules concerning proxies.

251. What is the procedure under The Companies (Consolidation) Act, 1908, for the convening of an extraordinary general meeting on the requisition of members? or How may shareholders require directors to call an extraordinary meeting of a company under The Companies Clauses Consolidation Act, 1845?

C.

252. What is the quorum prescribed for district councils by The Local Government Act, 1894?

253. What are the rules regarding the confirmation of minutes at meetings of any public authority with whose procedure you are conversant?

254. Give the Standing Orders on the motion to "proceed to the next business" of any public authority.

255. Give two rules applicable to meetings of one of the following public bodies:—

(*a*) County councils;

(*b*) Borough councils;

(*c*) District councils;

(*d*) Local education authorities.

JUNE, 1920.

Not more than six questions to be attempted, of which three must be in Section A and three in either Section B or Section C.

A.

256. Write a full note on the subject of notices of public meetings. Cite cases.

257. What are the duties and powers of a chairman of a public meeting?

258. Comment on quorum, adjournments, minutes, proxies, privilege in speeches.

259. State what you know of the law as to expulsion from meetings.

B.

260. Discuss the voting of directors in matters in which they are personally interested.

261. Give the substance of Section 66 of the Companies Act of 1908 on the convening of an extraordinary general meeting on requisition of shareholders. Cite the decision in Fruit and Vegetable Growers' Association *v.* Kekewich (1912).

262. What statutory requirement is there (if any) for—

(*a*) Reading the notice convening the meeting?

(*b*) Reading the auditor's report

at meetings of shareholders?

263. Which of the following amendments would be in order to the motion "that the report and accounts be adopted?" State your reasons:—

(1) "That the report and accounts be adopted save as to the paragraph in the report relating to the opening of a branch in Birmingham."

(2) "That the meeting be adjourned."

(3) "That the meeting do proceed to the next business."

(4) "That the report and accounts be received but not adopted."

(5) "That in view of the position disclosed in the report and accounts, Messrs. A and B be appointed a committee to consult with the directors as to the best method of re-organizing the company's finances, and to report to a meeting of shareholders to be held before 30th September next."

(6) "That a committee of inspection be appointed to investigate the company's affairs."

C.

264. State the provisions of The Local Authorities (Admission of the Press to Meetings) Act, 1908.

265. Explain the committee system for carrying on the work of a public body.

266. Give the substance of The Public Meetings Act, 1908.

267. Quote from the Standing Orders of any public authority the provisions relating to amendments.

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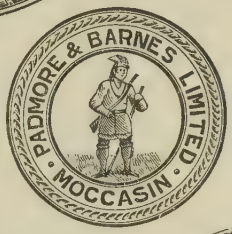

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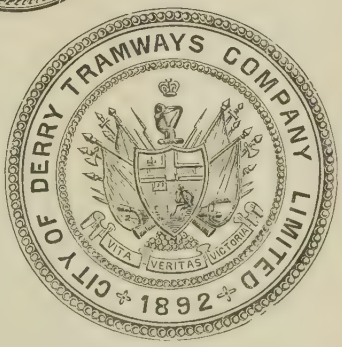

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